1946. K File No. B Dist. Police/46 Pt. I

Legal DEPARTMENT

B. BRANCH

P. 61 (E/U) 1946

Subject:— L. A. Bill No. XXI of 1946.

A Bill to Amend the Bombay District Police Act, 1890.

Bom. Act. No XVI of 1946

(Extracts from proceedings of B.L.A. and B.L.C)

(Pt. I)

File No. B. Dist. Police/46 - Pt. I.

Std. Sectt. Slip 24 B e.

530-B.

Progress Sheet.

Bill No. XXI of 1946 (A Bill to amend the Bombay Distt'ict Police Act, 1890.

I. Papers of Bill received in L.D. on Notice of Bill given to Secy., L.A. L.C.

II. Consideration of Bill recommended by the Governor to the Assembly on Council

III. Orders of the Governor as to sanction obtained on

IV. Bill published on 28th Aug. 1946.

V. 10 copies of the Bill as introduced in Assembly/ sent to the Government of India, Legislative Department, on 1-10-46

VI. 10 copies of S.C.'s report or/and [illegible] copies as passed by the L.A./L.C. together with extracts of proceedings in L.A./L.C. sent to the Government of India, Legislative Department, on

VII. Notice of Bill given to Secy., L.C./ 23-9-46

VIII. Consideration of Bill recommended to the Council/Assembly on

IX. 10 copies of the Bill as passed by the Council/sent to the Government of India, Legislative Department. on 1-10-46

X. 10 copies of S.C.'s report or/ and copies as passed together with extracts of proceedigs in L.C./L.A. sent to the Government of India, Legislative Department, on

XI. Assent of the Governor received on 28-9-46

XII. Act published on 30-9-40

XIII. Translations published on/ not published on the date fixed

XIV. 4 copies of the Act supplied to the Secretary to the Governor and 10 copies to the Government of India, Legislative Department, on

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4C.

Legal Department.

Submitted.

The H.D. has forwarded the papers of a Bill to amend the Bombay District Police Act, 1890 for further necessary action.

2. It may now be sent to the Manager, Government Central Press, Bombay, for publishing it in the Bombay Government Gazette, dated the 28th August 1946, as L.A.Bill No. XXI City of Bom. Police amendment Bill of 1946.

3. The Bill is to be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations may be published in the B.G.G. dated the 2nd September 1946. The G.R. in this behalf is put up for approval and signature. The copies of the Bill with the necessary endorsements have been prepared and appended to the G.R.

4. As regards the notice to the Secretary to the B.L.A., it may be given after the Bill is published.

5. The Statement of Objects and Reasons has been signed by the H.M. (HOme).

6. The Bill requires the previous sanction of the Governor under section 108(2)(ii) of the Govt. of India Act, 1935. The necessary draft will will be furnished to H.D. after the Bill is publis published.

7. The H.D. will also be requested to obtain HD's orders be the application of the proposed Act to the partially excluded areas.

BILLS.

A Bill to amend the Bombay District Police Act, 1890.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 542-L

Council Hall, Poona, 27th August 1946.

Memorandum from the Home Department, dated the 27th August 1946.-Transferring for necessary action, the papers relating to a Bill to amend the Bombay District Police Act, 1890.

RESOLUTION :- The Bill with the Statement of Objects and Reasons should be forwarded to the Manager, Government Central Press, Bombay, for publication in the Bombay Government Gazette, dated the 28th August 1946, as Bill No. XXI of 1946.

2. The Bill and the Statement of Objects and Reasons should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette, on the 2nd September 1946.

3. The dates of the various publications should be reported to the Secretary to the Bombay Legislative Assembly.

By order of the Governor of Bombay

Sd/- S.L.CHAUDHARI,
Assistant Secretary to the Government of Bombay, Legal Department.

To

The Manager, Government Central Press, Bombay (with the Bill and the Statement of Objects and Reasons and with a request that 250 Gazette copies of the Bill and the S.O.R. may be forwarded to the Secretary to the Bombay Legislative Assembly and 25 copies for the use of the Legal Department).

The Home Department,
*The Oriental Translator to Government,
The Secretary to the Bombay Legislative Assembly,
The Director of Information, Bombay,
} With a copy of the Bill and S.O.R.

*With five extra copies of the Bill.

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Office of the H.L.A.

I n the course of the Assembly debate on the first reading of the Bill No. XXI of 1946 to amend the Bombay District Police Act (Bill appended), a constitutional point was raised in the House as to whether the power given to Magistrates in clause 3 of the Bill to direct a dangerous or undesirable person to remove himself outside the Province is within the competence of the Provincial Legislature. It is contended that the Provinces have no power to legislate for the purpose of deporting or externing persons from the Province, particularly British subjects. The Speaker has deferred his ruling till Monday the 16th instant, and in the meanwhile has requested that the point be legally examined.

2. . It is true that the only entry in the three Legislative Lists regarding expulsion of persons is entry 17 in List I, but that relates only to expulsion from India and can have no application to expulsion fro. a Province. In my view the said provision in clause 3 of the Bill is intra vires inasmuch as it relates to entry 1 (public order) in the Provincial List II. Every Province has a right to expel dangerous and undesirable persons in the interest of public peace and order. I am fortified in this view by the following passages in Iyer's Law Lexicon and the Law of the Australian Constitution by Kerr:-

Iyer's Law Lexicon
(p.317)

"Deport :- The Legislature often confers power to deport, i.e., to remove and exclude from a partifular territory subjects or aliens whose absence from the territory is from one cause or another desirable (Hall, Foreign Juriediction of the Crown, 174-180). Such deportation is usually of an administrative character, enabling the ex officials to remove persons whose presence menaces the public peace or order of the state or a foreign territory. In this form the power is e xercised in substitution for the power

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of expulsion which would ordinarily be exercisable as an incident of territorial sovereignty by the power within whose dominions jurisdiction is exercised. (See Piggott, Exterritoriality, p. 101)".

The Law of the Australian Constitution
(pp.130-131)

"The phrase "police powers' connotes familiar ideas. The Government of the country, whether organised as "a Federal government" or (a State government," can, on the doctrine in the Saltpetre Case, take all necessary steps to ward off the invader.

The American conception of 'police power' is well described as the power possessed by a government to protect its citizens from danger, disease, and vice. It is generally said to extend to making regulations promotive of domestic order, morals, health and safety. The police power of a State justifies the adoption of precautionary measures against social evils. Under it a State may legislate to prevent the spread of crime or pauperism, or disturbance of the peace. It may exclude from its limits convicts, paupers, idiots, and lunatics, and persons likely to become a public charge, as well as persons affected by contagious or ~~infectim~~ infectious diseases."

3. Section 8(1)(a) of the Bengal Goondas Act, 1923, empowers the Bengal Government to pass an order directing a person to leave Bengal within such time by such route or routes and for such period as may be stated in the Order. Since the Adaptation Order in Council, 1937, passed under section 293 of the Government of India Act, 1935, has not modified this section of the Goondas Act, it must be deemed as not being in conflict with the provisions of the Government of India Act.

4. Reference is also invited to the Privy Council ruling in Queen v. Burah, L.R. 3 Appeal Cases, 889. The relevant passage in that case is as follows:-

"The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. When acting within those limits, it is not in any sense an agent or delegate of the Imperial Parliament but has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as those Parliament itself. The established Courts of Justice when a question arises whether the prescribed limits have been exceeded must of necessity determine that question; and the only way in which they can properly do so is by looking to the terms of the instrument by which, affirmatively, the legislative powers were create , and by which, negatively, they are restricted. If what has been done is legislation within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which category would of course be included any act of the Imperial parliament at variance with it, it is not for any Court of Justice to enquire further, or to enlarge Constructively those conditions and restrictions."

4. Since the Speaker is to give his ruling on Monday the 16th instant, the Advocate General is requested to give his opinion on the point raised and send it with the bearer.

Sd/- S.L.CHAUDHARI.
for Remembrancer of Legal Affairs.

U.O. to Adv. General, No. , dated the 13th September 1946.

Miss) K.V.G./16-5
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No. 1031-L
Legal Department,
Council Hall, Poona, 27th September 1946.

From

P.N.Moos, Esquire, C.I.E., I.C.S.,
Secretary to the Government of Bombay.

To

The Secretary to the Governor of Bombay.

Subject:- A Bill to amend the Bombay District Police Act, 1890.

Sir,

With reference to section 75 of the Government of India Act, 1935, I am directed to forward herewith for the assent of His Excellency the Governor, an authentic copy of a Bill to amend the Bombay District Police Act, 1890, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 23rd and 24th September 1946 respectively.

2. The Bill affects the special responsibility of the Governor under section 52(1)(a) of the Government of India Act, 1935. It does not fall within the purview of clause (a), (b) (c) or (d) of paragraph XVII of the Instrument of Instructions to the Governor of Bombay.

3. The subject-matter of the Bill falls under entries 1,2,3,14,16 and 37 in the Provincial Legislative List and entry 2 in the Concurrent Legislative List in the Seventh Schedule to the Government of India Act.

4. The Bill does not contain any provision repugnant to the provisions of any earlier Federal law or an existing Indian law with respect to any of the matters enumerated in the Concurrent Legislative List.
It is not therefore necessary to reserve the Bill for consideration of the Governor General with reference to section 107(2) of the Government of India Act, 1935.

5. The date on which His Excellency the Governor's assent is given may kindly be entered in the endorsement.

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6. I am also to forward herewith one copy of each of the papers noted in the margin. The Bill was not referred to a Select Committee.

1. Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons
2. Bill as read for the third time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislative Council.
3. Bill as read for the third time and passed by the Bombay Legislative Council.
4. Extracts from the proceedings of the Bombay Legislative Assembly dated the 13th, 14th, 16th, 17th, 18th, 19th, 20th, 21st & 23rd September 1946 and of the Bombay Legislative Council dated the 24th September 1946.

7. It is requested that His Excellency the Governor may be moved to give his assent to the Bill before the 1st October 1946 as the new Act must come into force on that date.

I have the honour to be,

Sir,

Your most obedient servant,

Sd/- P.M.MODI.

Secretary to the Government Bombay,

Legal Department.

Through the Secretary to the Government of Bombay,

Home Department.

(Miss) K.V.G.

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No. G.S. 3071.

Office of the Governor's Secretary
Government House.

From

D. Symington, Esquire, CIE.ICS.,
Secretary to the Governor of Bombay.

To

The Secretary to Government,
Legal Department.

Ganeshkhind, 28th September 1946.

Subject:- BOMBAY DISTRICT POLICE (AMENDMENT) BILL, 1946.

Sir,

With reference to your letter No. 1031-L, dated the 27th September 1946, I am directed to return herewith, with His Excellency the Governor's assent signified thereon, the copy of the Bombay District Police (Amendment) Bill, 1946.

I have the honour to be,

Sir,

Your most obedient servant,

Sd/-

Secretary to the Governor of Bombay.

Acts.

Publication of the Bombay District Police (Amendment) Act, 1946.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 1040-L.

Council Hall, Poona, 28th September 1946.

Letter to the Secretary to the Governor, No.1031-L, dated the 27th September 1946.

Letter from the Secretary to the Governor, No. G.S.3071, dated the 28th September 1946.

"With reference to your letter No.1031-L, dated 27th September 1946, I am directed to return herewith, with His Excellency the Governor's Assent signified thereon, the copy of the Bombay District Police (Amendment)Bill, 1946."

RESOLUTION:- The law should be published as Bombay Act No. XVI of 1946 in the Bombay Government Gazette, dated the 30th September 1946.

2. The Act should be translated into Marathi, Gujrati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Home Department with reference to the memorandum from that Department No.———— dated the 27th August 1946.

By order of the Governor of Bombay,
Sd/- S.L.CHAUDHARI,
Assistant Secretary to Government.

To

The Manager, Government Central Press, Bombay (with a copy of the Act and with a request that 15 Gazette copies of the Act may be forwarded to the Legal Department).

The Home Department,
*The Oriental Translator to Government,
The Secretary to the Bombay Legislative Council,
The Secretary to the Bombay Legislative Assembly,
The Director of Information, Bombay,
} With a copy of the Act.

*With five extra copies of the Act.

Clause 8 of the District Police Bill:

Sub-section (4) of section 46 empowers the Magistrate of a district or a Sub-Divisional Magistrate to directly any person who, not having been born in the district, has been convicted twice of an offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code to remove himself from the district and not to enter the same. This provision corresponds to existing sub-section (2) of section 46 of the Act, the only difference being that under the existing provision the person against whom an order of removal may be passed must be convicted more than twice of offences punishable under Chapter XII, XVI or XVII of the Penal Code. Similar provision obtains in sub-section (2A) of section 27 of the City Police Act, 1902. It was on the instructions (oral) raised from H.E. (H.D.) that the expression "convicted twice of offences punishable under Chapter XII, XVI or XVII of the I.P.C." was substituted for "convicted more than twice of offences punishable under Chapter XII, XVI or XVII of the I.P.C." both in the District Police Act and in the City Police Act. Chapter XII deals with offences relating to coins and Govt. stamps. Chapter XVI deals with offences affecting the human body, while Chapter XVII deals with offences against Property. The crimes specified in all these Chapters are on the increase in Province and I think H.E. (H.D.) is justified in proposing the change referred to above. It is true that all the offences referred to in these Chapters are not of the same intensity or magnitude but since Legislature when inserting in 1933 sub-section (2) of section 46 of the District Police Act and sub-section (2A) of section 27 of the City Police

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Act made no distinction between the various offences no distinction may be made this time and the amendment proposed by R.F.(H.J.) may stand.

Clause 4 :- New section 46A authorises the Magistrate to detain in custody a person brought before him for a period not exceeding fifteen days at a time. This person is the person against whom an order is proposed to be made under sub-section (1), (3) or (4) of section 46. This provision corresponds to sub-section (5) of section 27 of the City Police Act which has been on the statute book since 1938. The detention in custody is intended for the purpose of examining the person against him on order under sub-section (1), (3) or (4) of section 46 is to be passed and in circumstances in which the attendance of such person is not easy to secure. I do not think any minimum period beyond which the Magistrate should not detain any person in custody is necessary in this case. The provision is on the statute book, as already stated, since 1938 and no misuse of the power given by this provision seems to have been reported. On the contrary the prescription of a minimum period for detention in custody may in practice lead to administrative inconvenience.

Clause 4.

Section 46B.

The proclamation of emergency referred to in this section is not the same as the one which the Governor General has been authorised to declare under section 102 of the Government of India Act, 1935. Under section 102 of the G.of I. Act, after the Governor General declares the Proclamation of Emergency the Federal Legislature gets power to have laws for a Province with respect to any of the matters enumerated in the Provincial Legislative List or to make laws, whether or not for a Province with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to the Government of India Act, 1935. Here, that is in the District Police Act, the power given to the District Magistrate after declaration of the Proclamation of

of Emergency by the Provincial Government is of an altogether different sort. No constitutional difficulties would arise on the use of the expression "proclamation of emergency" in a Provincial Act. Though the expression is the same both in the Provincial Act and the Parliamentary Act the consequences resulting from the Proclamation are not the same. The expression has already been used in the City Police Act (sec. 27(2C) and no difficulty has arisen or likely to arise.

Clause 4.

Section 46D

Section 46D(3) authorises the Magistrate to remove in police custody a recalcitrant person to such place outside the District or the Magistrate may in each case prescribe. This provision corresponds to existing sub-section (4) of section 46 of the Act and sub-section (3) of sec. 27 of the City Police Act. It is not possible to construe this provision as giving power to the Magistrate to remove a person in police custody to a place outside the Province. These provisions are in the statute book since a long time and any change in those provisions at present might lend to unnecessary doubts. If it is considered that a Magistrate might construe the provision in sec. 46D as giving him power to remove a person in police custody to a place outside the Province executive instructions explaining to him the scope of his authority under this provision may be issued.

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It appears that the question is already discussed with the Advocate General and consequently my note is unnecessary. However the following note may be considered for what it is worth.

Unlike the American Constitution the Government of India Act, 1935 does not recognise duel citizenship. A British subject residing in one Province can have neither lesser nor higher rights than a British subject in any other Province in British India. Consequently the general rights and disabilities of a British subject in whichever Province he resides are the same, he being a subject of British Govt. under the Constitution. As such he cannot be deported from British India. But the question for consideration is whether he is entitled to a similar protection against deportation from one Province to another. The Govt. of India Act places absolutely no restrictions on such deportation. The only fundamental rights which have been guaranteed by the Govt. of India Act are those enumerated in section 298. In the present case no invasion of those rights is involved. Section 297 appears to be the only provision which regulates the inter-Provincial relations and that section prohibits restrictions on internal trade and commerce. No breach of that provision also is involved in the present case.

"Public order" is entirely a Provincial subject and this Government has plenary powers to legislate with respect to it. (See Queen v. Burat 3 A.C. 889; Hadge v. The Queen, 9 A.C. 117); and this power includes power to enact incidental or ancillary legislation, for "when you have got a main purpose expressed and ample authority given to effectuate that main purpose, things which are incidental to it and which may reasonably or properly be done and against which no express prohibition is found may and ought prima facie to follow from the authority for effectuating the main purpose by proper and general means" (10 A.C. 119 at p. 129).

In the American Constitutional system the Police

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power has been left with individual States. Consequently "all that the Federal authority can do is to see that the States do not, under cover of this power invade the sphere of national sovereignty, obstruct or impede the exercise of any which the Constitution has confided to the Nation or to deprive any citizen of rights guaranteed by the Federal Constitution" (See Cooley Vol. II p.1232). Justice Mahamakar says : "The dimensions of the Govt's police power are identical with the dimensions of Govt's duty to protect and promote public welfare. The measure of police power must square with the measure of public necessity. The public need is the polestar of the enactment, interpretation and application of the law. If there appears in the phrasing of the law and practical operation of the law a reasonable relation to the public needs its comfort, health safety and protection, then such act is constitutional, unless some express provision of the Constitution be clearly violated in the operation of the Acts Moreover the growth of the public power must from time to time conform to the growth of our social, industrial and commercial life. You cannot put a straight-jacket on justice any more than you can put a straight-jacket on business. Private initiative enterprise and public demand are constantly discovering new methods and agencies, honest and dishonest, and the police power must be always available to afford apt and adequate protection to the public" (Ibid pp. 1226,1227). "This police power of the State" says another eminent Judge, "extends tp the protection of the l ves, limbs health, comfort and quiet of all persons and the protection of all property within the State". Consequently the powers of a Provincial Government to legislate for the purpose of the maintenance of public order are extensive and include powers to deal with persons who are considered to be dangerous to the public peace and order. As stated above the

deportion of such persons from the Province would involve no invasion of the legislative power of the Central Govt. nc the breach of any fendamental rights of British subject guaranteed by the Constitution nor the infringment of any inter-Provincial Constitutional relations. In England "Parliament being soverdign, the subject cannot possess guaranteed rights as are guaranteed to the citizen by many foreign constitutions" (see Halsbury Vol. VI p. 390). Except in so far as they are guaranteed by section 293 of the Govt. of India Act the British subjects in British India pos possess no higher rights.

In Rex v. Smithers (16C.I.R.99) the question relating to the power of State to exclude undesirable persons by a Statute arose. Facts of that case were as follows:

An Act passed by the Legislature of New South Wales known as influx of Criminals Preventio. Act, 1903 by section 3 provided that "any person (other than a person who has been resident in New South Wales at or prior to the commencement of this Act) has before or after such commencement, been convicted in any other State .... of an offence for which he was liable to suffer death or to be imprisoned for one year or longer; and if before the lapse of three years after the termination of any imprisonment suffered by him in respect of any such offence, such person comes into New South Wales he shall be guilty of an offfence against this". An inhbitant of Victoria who had been convicted of being a p person having insufficient lawful means of support, which offence may, by the law of Victoria, be punished by imprisonment for twelve months, having come within three years after the termination of imprisonment suffered by hi. in respect of such offence come into New South Wales, was convicted there of an offence against the section quoted. The last mentioned conviction was held bad by Griffith C.J. and Barton J observing that "the power of the Parliament of a State to make laws for the exclusion of persons whom it thinks undesirable immigrants is limited to the . P.T.O.

deportion of such persons from the Province would involve no invasion of the legislative power of the Central Govt. nc the breach of any fundamental rights of British subject guaranteed by the Constitution nor the infringment of any inter-Provincial Constitutional relatio s. In England "Parliament being sovereign, the subject cannot possess guaranteed rights as are guaranteed to the citizen by many foreign constitutions" (see Halsbury Vol. VI p. 390). Except in so far as they are guaranteed by section 293 of the Govt. of India act the British subjects in British India has possess no higher rights.

In Rex v. Smithers (16C.I.R.99) the question relating to the power of State to exclude undesirable persons by a statute arose. Facts of that case were as follows:

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making of laws for the promotion of public order, safety or morals and that the exclusion of a person convicted of such an offence as that of which the accused was convicted was not within the power limited".

It appears therefore that the States in the Australian Commonwealth have implied powers to exclude the subjects by a legislation for the promotion of public order and safety; and evidently this power includes power to exterminate the subjects by similar means. Section 92 of the Constitution of the Commonwealth of Austria is much wider than section 297 of the Govt. of India Act in that it provides for "intercourse among States". In the circumstance it appears that clause 3(a) of the Bill providing deportation of persons (including British subjects) appears intra-vires. The question whether it is necessary to amend it so as to limit the deportation of British subjects to any place outside the Province but within British India may be considered. In 51 cl 400 The Bengal Goondas Act, 1923 was considered; but the vires of that Act was not raised.

Sd/- R.T.Katrekar.
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(Miss) K.V.G.
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No. P.O.L.
Shahibagh, Ahmedabad No. 4.
16th July 1946.

To

The Secretary to Government,

Home Department, BOMBAY.

The cult of the knife has been very prominent during the recent communal riots in Ahmendabad City. The District Magistrate has issued an order under section 42, District Police Act prohibiting the carrying of weapon etc. and in the course of searches by the Police quite a number of people have been found in possession of knives. They are being prosecuted for breach of the District Magistrate's order but as the District Police Act provides a penalty of fine only for such offences these persons have in addition been detained under Defence of India Rule 129. It was considered that persons carrying knives in defiance of the District Magistrate's order may be presumed to be intending to commit some offence, although undoubtedly in some cases knives would be carried for self defence. It is clearly necessary however that such persons should not be at large so long as communal unrest continues. The Defence of India Rule lapses at the end of September and in my opinion it is absolutely necessary that power should be given to the authorities to protect the public from persons of this class. Ad hoc legislation on the lines of Defence of India Rules 129 and 26 would probably not be acceptable to Government or the Legislature. The desired effect can however be obtained by amending section 68 of the District Police Act to provide a penalty of fine or imprisonment or both for disobedience of an order lawfully made under sections 42, 43 or 44 of the District Police Act. I suggest that the imprisonment should be for a maximum period of 3 months.

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2. It is not improbable that until an agreement has been reached between the major political parties as to the future constitution of India there will be occasional outbreaks similar to that recently witnessed in Ahmedabad City. The District Magistrate and Police must be given the fullest powers to prevent violence and to minimize it when it breaks out. The arrest of persons in illegal possession of knives and their detention in jail has proved to be one of the most effective preventive actions taken. I therefore suggest that Government should consider the question of amending the District Police Act in the manner suggested during the current session of the Assembly if possible.

3. I would also like to invite attention to para 10 of my report on the working of the Police in Northern Division in the year 1945 (copy attached for ready reference) and suggest that this proposal receive Government's early consideration.

Sd/- L.

Commissioner, N.D.

(Miss) K.V.G.

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Paragraph 10 of the Commissioner's report on the working of the Police in the Northern Division for the year 1946.

"10. The second matter to which I would like to refer is the increasing "cult of the knife." The District Superintendentof Police, Ahmedabad City, has referred to the light heartedness in which Magistrates generally deal w with offences of this nature. I feel the District Superint Superintendent of Police is on solid ground here and that something must be done to prevent the use of the knife in private and public quarrels. The ~~prevent the use of~~ the next two years with the possibility of large-scale unemployment following on the demobilisation of large numbers of servicemen and with further possibility of bitter communal trouble, will give ample opportunity to hooligans and goondas to take to the knife and it is, therefore essential that all offences of this nature should be treated with the greatest firmness. The District Superintendent of Police's suggestion that offences in which a cutting instrument is used should be made non-compoundable might, with advantage, be followed up."

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DISTRICT POLICE ACT AMENDMENT BILL

MO·H Bk Hb 128B—1

L. A. BILL No. XXI OF 1946 (A BILL TO AMEND THE BOMBAY DISTRICT POLICE ACT, 1890).

Bill read clause by clause.

Question again proposed " That clause 4 do stand part of the Bill ".

The Hon. the SPEAKER : Yesterday we considered several amendments to sub-section (4) of section 46A in clause 4. The sections that follow are 46B, 46C, and 46D. I read these clauses in the morning, re-read them, and I have come the conclusion that it is very difficult to separate one from the other. They are intermixed that unless all of them are taken together it becomes difficult even for the hon. Members to confine themselves to a particular small amendment, which may be before the House, without touching on other matters which are there in the other clauses. Therefore, what I have decided is that we should take up all these sections—46B, 46C and 46D—together and get all the amendments to these sections moved together. The amendments stand only in the names of four hon. Members, namely, Mr. Shamsuddin, Mr. Quwari, Mr. Chakranarayan and Mr. Patel. After getting all these amendments moved, we can have a collective debate on all these sections, so that all the hon. Members will have an opportunity of criticising all these

[The Speaker]

three sections in a connected manner. I will, therefore, call upon the hon. Member Mr. Shansuddin to move his amendments Nos. 16, 20 and 22.

Mr. J. H. SHAMSUDDIN (Kanara District) : Sir, I beg to move the following amendments (Nos. 16, 20 and 22) :

1. *Delete* the proposed new section 46-B.
2. *Delete* the proposed new section 46-C.
3. *Delete* section 46-D.

Amendments proposed.

Mr. ABDUL RAZAK M. A. QUWARI (Thana District) : Sir, I move the following amendments (Nos. 17, 18, 21 and 23) :

1. In clause 4, line 54, *delete* " different communities or sections thereof or".
2. In clause 4, *delete* "(*a*)' in line 76 and " or " and whole of sub-section (*b*) in line 80.
3. In clause 4, *substitute* the following for the new section 46C, namely :—

" The Magistrate or any officer shall if required by the person against whom an order is made under sub-section (*3*) or (*4*) of section 46 or sub-section (*3*) of section 46B, disclose the sources of his information or any fact upon which the Magistrate has formed his opinion, and the reason thereof .

4. In clause 4 line 138, *delete* the words " but shall not, except for reasons to be recorded in writing, ess than six months, and shall also be liable to fine " and add the words " or shall be fined ".

Amendments proposed.

Mr. B. B. CHAKRANARAYAN (Poona *cum* Ahmednagar) : Sir, I beg to move the following amendments (Nos. 18A, 18B, 18C, 18D, 18E, 18F, 19A, 22A, and 24A) :

1. In clause 4 in sub-clause (3) (*i*) (*b*) of section 46B, prefix the words " if he be not born in the Province " to " to remove himself etc. ".
2. In clause 4, in sub-clause (3) (*i*) (*b*) add after the words " to such place within the Province " the words " if he happens to be born within the Province".
3. In clause 4, *delete* sub-clause (*ii*) of sub-section (*3*) in section 46B.
4. In clause 4, *delete* the first proviso to clause 3 (*ii*) of section 46B.
5. In clause 4, *add* " nothing in clause (3) (*ii*) of section 46B shall prevent the person concerned from approaching the Court of Sessions for an order of immediate release or to the High Court for an order under the Habeas Corpus".
6. In clause 4, *delete* the whole of sub-clause (5) of section 46B.
7. In clause 4, *delete* the section 46C.
8. In clause 4, *delete* the words " two years " and *substitute* the words " six months " in line 138 in sub-section (2) of section 46D.
9. In clause 4, *delete* the words " but shall not .....six months " in lines 138–139 of sub-section (2) of section 46D.

Amendments proposed.

The Hon. the SPEAKER : Amendments Nos. 19, 24 and 25 stand in the name of
2-55 p. m. the hon. Member Mr. Ahmed A. Patel and he may move them.

Mr. AHMED A. PATEL : Sir, I beg to move (Nos. 19, 24 and 25) :

(1) In clause 4, *delete* the proposed new section 46C.
(2) In clause 4, in the proposed new section 46D in line 138 *delete* the words from " But shall not " up to the words " six months".
(3) In clause 4, in the proposed new section 46D in line 139 *substitute* " or " for " and " and *delete* " shall also ".

Amendments proposed.

The Hon. the SPEAKER : Amendment No. 19 has already been moved by the hon. Member Mr. Chakranarayan and so I shall not read it again.

There is one more amendment which has been handed over to me by Government. It stands in the name of the hon. Member Mr. Kunte. He may move it. The amendment may be numbered 25B.

Mr. D. K. KUNTE : Sir, I beg to move :

In clause 4, in sub-section (1) of Section 46D—

(*a*) in clause (*i*), after the words "fails to remove himself" *insert* the words "as directed",

(*b*) in clause (*ii*), after the word "having" *insert* the word "so".

Question proposed.

The Hon. the SPEAKER : The hon. Member Mr. J. H. Shamsuddin.

Mr. J. H. SHAMSUDDIN (Kanara District) : Sir, the three amendments that I have moved relate to the extraordinary powers that Government is seeking for itself and for the District Officers. I believe that it is not necessary for Government to come to this House for seeking to arm themselves with such drastic powers under the present circumstances, in view of the fact that the ordinary law of the land is sufficient to meet any emergency that may arise or that Government apprehends in future. I shall take the clause incorporating sections 46B, 46C and 46D. The main section is 46B, which relates to the declaration of a state of emergency by the Provincial Government, and thereafter the delegation by it of certain powers to the District Officers.

Now, if we analyse the contingencies or the several aspects of the state of emergency that Government imagines or apprehends, these emergencies may relate either to political or to communal disturbances, and I submit that the ordinary law of the land is sufficient to deal with these apprehended disturbances at any time, either at the present moment or in the near future. We have got on the statute book provisions under section 144 of the Criminal Procedure Code. Those provisions are sufficient to meet any disturbance of the peace so far as a section of the population or a section of the community or even certain individuals are concerned. If the acts, movements and designs of an individual are such as to cause disturbance of the peace, or if the actions are such that they are likely to result in a disturbance of the peace, then Government, or for the matter of that, a Magistrate or a Sub-divisional Magistrate can proceed under section 144 and restrict the movements of, or make an order upon, the person concerned to regulate his actions in a way not to be prejudicial to the safety or tranquillity of the public.

So far as communal disturbances are concerned, the self-same section can be availed of by the Government, as it is also intended to be applied against individuals, but not against any section of the public or against more than one individual, because the action that is being contemplated under a state of emergency and the authority that is being given to District Officers is to detain the person concerned. In fact, the section will be used, and quite legally too, against individuals only and not a group of individuals. If Government wants to restore peace, or it wants to prevent a disturbance of the peace by a group of individuals or by a section of the people, then this section will not hold good, for Government will have to take recourse to

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section 144 of the Criminal Procedure Code also. Now, it is not made out by Government that the provisions of section 144 cannot be applied to the individuals concerned in disturbing the peace or tranquillity of the place or part of the district, whatever may be the case. If the provisions of this Bill do not avail them for controlling the movements of a group of people or individuals, it is but natural that section 144 of the Criminal Procedure Code, which is effective in the case of more than one individual, will be taken recourse to. If we compare the provisions of section 144 of the Criminal Procedure Code with the provisions of section 46B, we will find that, with a slight difference in the phraseology, the import of the provisions of both the sections is identical and practically similar. Section 144 of the Criminal Procedure Code reads thus :

"In cases where, in the opinion of a District Magistrate, a Chief Presidency Magistrate, Sub-Divisional Magistrate, or of any other Magistrate, not being a Magistrate of the third class, specially empowered by the Provincial Government or the Chief Presidency Magistrate or the District Magistrate to act under this section, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable,"

The above provision is so very wide that any disturbance, any imaginary situation, any contemplation of any disturbance of peace, or any activity of a group or a section of the population or an individual can be brought in, and wide discretion is given to the District Magistrate and the Sub-Divisional Magistrate to act if they think that this section should be invoked for the discharge of their duties with regard to the administration of the part of the district which they may be called upon to administer. So, the statute book and the ordinary law of the land provide a sufficient guarantee and sufficient measure of protection both for peace and tranquillity and for controlling and preventing the nefarious designs of any persons or any body of persons. In view of this, I wonder why Government should come to this House for extraordinary measures and for drastic powers the use of which will depend upon the expression of opinion by the Provincial Government concerned, and that opinion will be the expression of opinion with regard to the state of emergency or with regard to the state of certain circumstances obtaining in a certain part of the district or the whole of the Province. The Criminal Procedure Code, provides as follows :—

"Such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance, or injury, to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray."

As I said, the powers that are sought to be taken and the powers that Government want to ask to prevent disturbances of a political or of a communal nature are already there.

If you read the conditions necessary for declaring a proclamation, you will see that a proclamation can be declared on the contingency of a public disorder arising. Public disorder may arise due to political disturbances, and political disturbances include disturbances resulting from economic conditions. Sub-section (*1*) of section 46B laying down the conditions for a proclamation to be made says :

"The Provincial Government may, if satisfied that the public peace or tranquillity in a district or in any part thereof is disturbed or is likely to be disturbed in consequence of a conflict between different communities or sections thereof or gangs or factions, declare, by a proclamation (hereinafter referred to as "proclamation of emergency") in the Official Gazette that an emergency exists."

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As I said, Government has got such wide powers already under the ordinary law of the land. If Government intend to book a particular individual or body of individuals whose activities may to some extent arouse illfeelings among different communities or among different sections of the communities, we find that there is sufficient provision in the Penal Code in the chapter " Offences relating to Religion ". A recent addition, viz., section 295A, has been made to that chapter which says :

" Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of His Majesty's subjects, by words, either spoken or written, or by visible representations insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

So, if the action of the individual concerned is considered by Government to disturb the relations between communities, then it will naturally be the result of the feelings of a particular section of the community being offended by the action of the person concerned, and in such a case section 144 of the Criminal Procedure Code and section 295A of the Indian Penal Code are quite sufficient for any emergency, and experience teaches us that these sections were sufficient to deal with any emergencies in the past, except the emergency that was contemplated by the Defence of India Act due to war and the consequent conditions prevailing in this country. With the cessation of hostilities and with the progress towards normal conditions, I feel that it is unnatural and unreasonable to expect the Government to seek more powers of the nature which were decried and which were not necessary even under the conditions prevailing when the Defence of India Act and the rules framed thereunder came into existence.

Now I come to section 46C. Under this section the District Officers who may issue the orders against the person concerned are absolved from the liability or duty of disclosing certain matters which may give an opportunity to the person concerned to know the allegations against him and the reasons for such allegations, and as to why his movements have been found to be dangerous, and why he has been detained for a particular period, though it may not exceed two months.

Section 46D is a penal clause for the breach of the order concerned. So, if we come to the conclusion that the powers sought to be taken under section 46B are not necessary and decide to delete section 46B, then sections 46C and 46D will be redundant.

I do not want to take the time of the House any longer, except saying that the indications of the conditions are not such as to make Government come to this House for taking drastic powers and of delegating them to the district officers when the ordinary law of the land is quite sufficient and is proved to have been sufficient for any emergency that had occurred in the past or may occur in the futu I, therefore, commend my amendment for acceptance.

The Hon. the SPEAKER : The hon. Member Mr. Quwari.

Mr. M. M. A. BHAIJI : On a point of information, Sir. Amendment No. 16 of the hon. Member Mr. Shamsuddin seeks to delete the proposed new section 46-B and Amendment No. 17 of the hon. Member Mr. Quwari proposes the deletion of a part of section 46-B. If both these amendments are taken together, how are we to support any particular amendment ? How can it be possible for members to take part in such a discussion ? I think it would be better to take these two amendments one by one.

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The Hon. the SPEAKER : It is not that all the amendments will be put to vote all at once. I have only given hon. Members an opportunity to express their views in a connected manner. If the hon. Members think that the whole of the clause should be deleted, as the hon. Member Mr. Shamsuddin has suggested, they can support him. They can at the same time say that if it is not possible then they support the amendments moved by the hon. Member Mr. Quwari, which suggest certain changes in the existing clause.

Mr. M. M. A. BHALJI : It will not work and it will cause not a little embarrassment. Supposing I want to support the hon. Member Mr. Shamsuddin's amendment, then, in the same breath, I cannot say that I am prepared to accept the hon. Member Mr. Quwari's amendments to the clause. It will place the hon. Members in an embarrassing position, at least that is what I feel.

The Hon. the SPEAKER : I do not think there will be any embarrassment.

The hon. Member Mr. Quwari may proceed.

Mr. ABDUL RAZAK M. A. QUWARI (Thana District) : Sir, I propose to confine my remarks to the amendments I have moved. First of all, I shall deal with amendment No. 17.

The Hon. the SPEAKER : It may be understood by all the hon. Members proposing amendments that when they speak on their own amendments they have also to speak on the amendments proposed by other hon. Members as there will be no second opportunity given to them to speak on the amendments moved by other hon. Members.

Mr. ABDUL RAZAK M. A. QUWARI : Sir, it is very difficult to know the intention of Government in including the words, which I seek to delete, in section 46B (1). So far as communal disturbances are concerned, Government have ample powers to deal with them. Even to-day this provsion is not to be found in the present Act which was passed in the year 1890, as modified up to 1st of October 1946. I fear that if these words are kept intact, the powers that are given to the district officers will be misused. It is a simple matter to stamp a movement to be communal. It has become very simple to declare that a state of emergency has come into existence. For instance, if a procession is taken out and if somebody were to throw a stone at it and a little scuffle takes place, a state of emergency can be declared under the section. It gives a very good handle to mischief-mongers if they choose to do harm to the other party. That is why I wish to delete these words from section 46B (1).

Now I come to amendment No. 18. It is provided in section 46B (1) that the District Officers will be empowered under this Act to deport persons from one district to another or even outside the Province. I am totally against this, because if there are certain persons who are mischief-mongers or undesirable persons, why should they be sent out of the district ? If they are really undesirables in my district, are they not undesirables in the other district ? It is nothing but unjust ; because my house has become dirty I collect all the rubbish and throw it into the house of my neighbour. This is not a good policy. Why should they be sent away to another district or to another Province ? Unfortunately, Sir, I had enough of such trouble in my district. These undesirables were externed from Bombay to Bombay

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Suburban District. Then they came into my district and they had their headquarters at Mumbra. It was very easy for them to go to Kalyan or to go to Ambernath and other places and carry on their nefarious activities. As I happened to be an Honorary Magistrate at Kalyan and as this area was under my jurisdiction all those cases were sent up to me. There were so many of these fellows coming every day before me for trial. At last, those people got in touch with local villagers and won them over and the number of these gangsters increased and there were a number of cases of looting and house-breaking. Not only that, even murder was committed. At last, I had to report the matter to the District Magistrate very strongly, to say that he would please see that these persons were removed from the suburbs. Luckily, I should say, one of these fellows was murdered, and the District Magistrate found some way to send them away from the district and we got rid of these people. Similar things will happen if these undesirables are sent out from one district to another—they are sure to make trouble wherever they go and they will not keep quiet there.

The best thing is to let us try and find out some way to improve them. I would ask the Hon. Minister to come forward with a concrete proposal to do something to improve the lot of these people. If there are undesirables in my district I do not want to send them over to Kolaba, Ratnagiri or any other district. Let them remain where they are and let us try to find out some other way to improve them that they may become good citizens.

Now, Sir, I go to amendment No. 21. As the present Bill proposes, the Magistrate is not bound to disclose the source of his information ; nor is he bound to give out the evidence that is led, if any, against the person concerned. To condemn a man without telling him what the charges against him are is most unreasonable.

The Hon. the SPEAKER : The hon. Member may see that there is nothing about charges against a person in section 46C.

Mr. ABDUL RAZAK M. A. QUWARI : Sources of information are to be kept away from the person concerned, and I believe only a substance of it will be given. Then it is very difficult for him to defend himself. What has he to do ? The charge will be read out to him and he will be condemned. Why not give him an opportunity to cross-examine the witnesses and to cross-examine the complainant and allow him to lead his own defence ? He is really a coward who gives information about others to the Police officer and does not wish his name to be given out. Let him come forward if there is any truth in what he says. If the name of the informant is not to be disclosed to the person against whom allegations are made, then, if I have any grudge against any person, and if I am in the good books of the Police officer or the Magistrate, I can go and lodge an information against any respectable person and my name will not be given out and I sit quite tight at home. Then the person against whom the allegation is made is dragged before a Police officer or a Magistrate. But let me go and stand side by side with the person concerned, and let him question and cross-examine me, if there is any truth in the allegation. If I stand the cross-examination, the law is there to decide the case on merits. But the legal rights of the person should not be taken away. I feel, Sir, that the prestige and honour of many a good citizen is at stake.

Now, as regards amendment No. 23. In this section the minimum punishment is prescribed. Nobody can grudge against making provision for a maximum

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punishment, but I do not understand why the Hon. Minister for Law has found it fit to prescribe a minimum punishment. Why not leave the question of punishment to the Magistrate ? Is it suspected that the Magistrate will not inflict sufficient punishment even on finding that the offence is really a serious one ? If not, then why this provision for a minimum punishment ? The other day several hon. Members pointed out that minimum punishment is prescribed only in two or three sections of the Indian Penal Code. We find in this Bill that a minimum punishment is also mentioned. Why not leave it to the good sense of the Magistrate to inflict a suitable punishment if really the offender has committed a serious offence ? Leave the question of punishment to the discretion of the Magistrate. I hope that the Hon. Minister for law, who is in charge of this Bill today, will see his way to accepting the amendment that I have proposed.

Mr. B. B. CHAKRANARAYAN : Sir, I would put my amendments under four or five heads. Amendments 18A and 18B relate to externment either out of the province or in the province itself, but out of the district. The second category of amendments refers to the powers of detention without trial, without any inquiry, now being sought for the District Magistrate and his assistants. The third set of amendments deals with cases of the unlawful return of the culprits who have been dealt with under the powers of externment. The fourth deals with the matter of procedure and the fifth deals with the question of minimum sentences.

Now taking them seriatim, I would suggest that, if externment must be there, then the culprits who are under such sentences should not be externed out of the Province, unless they are strangers to this Province. So far as those who belong to the Province are concerned, they should not be sent out of the Province. I do not know whether we have really reached the stage when we have to provide for concentration camps. That is what the Government is trying to do at present. We have had no reply to the repeated questions as to where Government proposed to detain those people whom they wish to extern from their districts. As suggested by one Member it would not be difficult to find ways and means to deal with people who are suspect or who are prone to create mischief or disturb the public peace. And my amendments, Sir, are only consequential amendments, because I know this House is going to pass this clause and all the remaining clauses, however vociferously we might denounce them on legal and other solid grounds. Since that is going to happen, I am trying to make the path as smooth as possible for these unfortunate beings by suggesting the first two amendments.

Now coming to the point as regards the powers of detention that are sought for the District Magistrate or the Assistant Magistrate, I must invite the attention of the House to the fact that these are extraordinary powers, and it is to be hoped that before they are exercised, before they become necessary, that sort of emergency must arise which would justify their exercise. The powers of detention are limited even in the case of Magistrates. We know that under section 167 of the Criminal Procedure Code, a Magistrate can order the detention of a person under accusation while investigation into the offence is being carried on by the police. He is not authorised to go beyond certain limits ; that is, as long as the investigation lasts, the Magistrate's power to order his remand or detention in police custody might exist, but not beyond a certain limit, and unless his offence happens to be a very heinous one, that is, an offence like murder, culpable homicide, dacoity accompanied by murder and so on and so forth, which are necessarily non-bailable, we find that an under-trial prisoner always has the benefit of bail. Though there

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are very rare cases where bail cannot be secured by the party concerned, ordinarily speaking—and we are not talking about exceptions—bail is provided for and the man is free at least during the period of his trial. Now in this case the powers of detention are sought for the Magistrate without there being any trial, without there being any investigation, and at the sweet will of the Magistrate concerned. As the previous speaker said, such wide powers are likely to be abused, and very seriously abused in cases of persons who are really law-abiding and respectable. It would really be a great surprise to me to find that the police, who are entrusted with the execution of the orders of the District Magistrate, will refrain from putting them into wrong use. We find that in this case the power of detention given to a Magistrate is of 15 days at a time, and the power arrogated by the Government to themselves amounts to about 2 months. It is a very queer situation. I do not see why, when an emergency might not last more than a day or two, or a week, the Magistrate should have such wide and drastic powers to curtail the liberties of the party concerned. We have to realise, Sir, that these are cases of emergency; these are not the cases which might occur under the previous clauses, that is, during peace time. Although I find that there is a good deal of overlapping in the various clauses, and a good deal therefore of the fault of redundancy is exposed, here in this particular case we find that the giving of power of detention up to a particular period of time, is not a very wise step.

Now in the case of punishment, a man who returns unauthorisedly after an order of externment is passed against him under section 46D, or a man who returns within two years under Section 46A (*1*), or a man who returns at any time, if he is deported under Section 46A (*3*), is liable to very serious punishment. But in the case of those who take part in, or associate themselves with persons who take part in, creating a breach of the peace, we find that though these persons may be very mischievous after an emergency has been declared by Government, yet directly the emergency ceases—and it cannot last longer than a month, unless it is renewed by Government—they will go scot-free automatically. But there is no chance for the poor man who has been detained to be out of it at least for a month. So a month's detention is definite in these cases, and if the Government is pleased to extend the period of this emergency, then Heaven knows how long he may be detained. Now, as regards these cases, in order to safeguard the interests of really law-abiding citizens, who may unfortunately get involved in such predicaments, I am suggesting that any person, who is detained under sub-section (*2*) of section 46B, should have the right of applying to the Sessions Court for his release on bail, or to the High Court for an order under the *habeas corpus*. That is why I am suggesting these two amendments. I thereby do not include persons who are really mischievous and who really take part in creating disturbances, molesting people and destroying or damaging property. Nobody is going to go against this Government, if they take unusual measures for unusual times. But a there is a very serious danger of innocent people being hauled up for various reasons, which need not be stated here now, I would suggest that when a man of that kind is detained, whether he is detained for a fortnight or for a month or till the emergency ceases, he should not be deprived of his right to approach the Sessions Court for his release on bail or the High Court for an order under the *habeas corpus*. Then there will be an opportunity for the man to place his case before the Court. And there will be an opportunity for Government also to prove that the man does not deserve to be released on bail. I submit that the provision for detaining a person indefinitely merely on the bare word of an ordinary police constable, without a trial, without an

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enquiry, without an investigation, is wrong in principle, which no country trying to be free can stand. I, therefore, request the Hon. Minister to consider this amendment carefully. Why should Government try to suppress these safeguards ? There might be cases where innocent people might be involved, and they should not be deprived of the right of being released after the considered decision of high judicial tribunals like the Sessions Court and the High Court.

As regards the punishment contemplated to be imposed upon persons committing offences under section 46C and 46D, there seems to be a clear distinction made, but this is a distinction without any difference. What is the difference between a man who commits offences of breach of the peace, or who threatens or is preparing for a breach of the peace, and a man who behaves in a similar way but after the emergency has been declared by Government. Here we find that a man under section 46C is dealt with more drastically—and, I think, very unjustly—than a man who may be immediately helping the disturbances and taking a very active part therein. I submit that there should be no such differentiation. And if the people hauled up could be set free after the emergency ceases, then there is no reason why those who are charged under section 46C should not be treated equally leniently.

As regards the non-disclosure of the sources of information, I think that that hits against Section 46A where an enquiry is supposed to be held into the allegations made against the person concerned. If there is to be an enquiry, and if the person concerned gets the opportunity of defending himself, what is the sense in keeping away from him the name of the informer ? In fact, under ordinary circumstances, one would expect the informer to be the first man to be brought into the witness box to stand cross-examination. What we find here is that some unknown person gives some unknown information to a police officer, and the police officer gets hold of the man against whom information has been received, detains him, and informs him of the allegations without disclosing the source from which he received them. In such circumstances, would a man be able to defend himself ? If the informer's name is not disclosed, can the man prove how and why the allegations came to be made against him ? If he knew the name of the informer, that would open out a very large vista for him to defend his case, and it might be possible for him to prove to the satisfaction of the police officers that the allegations were the result of some grudge, or hostility, or enmity. There is no point in suppressing this very important piece of information. We know that the police have got informants all over the country. There is a spying system all over, and if the police are going to keep back their informants—I do not mean the informants paid by them and who can manufacture allegations, but I mean the informants who really are of a more responsible type—what is the point in it ? Do Government want to give the man a chance of defending himself ? Do they really want to institute an enquiry in the interests of the accused ? If they do, then they cannot keep back evidence of this first-rate importance. That is why I submit that this section ought not to find a place in the Bill.

Lastly, there is the question of minimum sentence. As I said in my general observations on this Bill, there are only one or two sections in the Indian Penal Code where a minimum sentence is prescribed. For instance, there is transportation for life for offences amounting to culpable homicide or offences of a like nature. If a man commits a murder, the only sentence that can be awarded to him would be death. This is not, really speaking, a minimum punishment ; this is the only one

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and final punishment, and that is to remove him altogether, or to extern him from this world. There are one or two other types of offences for which a minimum punishment has been provided, as, for example, in the case of a person causing grievous hurt to another. But is there any reason for laying down a minimum punishment in this Bill? I submit that it is an unnecessary provision. I think that Government are not giving proper credit to their officers for using their discretion in this matter. When a limit is laid down, then the officers' hands are tied; and even if they feel that such a heavy punishment is uncalled for and unnecessary in a particular case, they would be quite helpless. In these circumstances, the penal clause should only lay down the maximum punishment. That is the usual method. The rest should be left to the discretion and to the good sense of the Magistrates to deal with the accused according to circumstances.

Mr. AHMAD A. PATEL (Broach Sub-division): Sir, my amendment relates to the deletion of section 46C. This is the most objectionable of all the sections, as it denies the ordinary right of an accused to know the allegations against him. There are various clauses in the Bill which conflict with one another. Government are giving the suspect something with the right hand and taking it away with the left. Section 46A gives a right to the suspect to know the allegations against him. But if he approaches the court of law or the magistrate or any other officer who passes the order, the officer will not disclose to him the sources of his information. To my mind, this is like the well-known tactics of the Britishers who always say "We deny you freedom but we are your trustees because we are here in your interest". In the same way, the officer will pass the order against the suspect but will tell him that he shall not know the allegations against him because it is not in the interest of society to disclose the allegations.

Four classes of persons will come within the purview of this section 46C. The first class will be that of a gang or body of persons causing or calculated to cause alarm. The second class of persons will be the person also causing or calculated to cause alarm. The third class will be of the man who is not born in the district. Such a man comes within the purview of sub-section (*4*) of section 46. Then the last class will be of the person coming within the purview of Section 46B, that is, he is a man who, after a proclamation of emergency by the Provincial Government, is supposed or calculated to cause alarm. All these classes of persons will come up within the purview of section 46C. If we consider this section very properly, we will find that the whole Bill has been reduced to *reductio ad absurdum*. In one section Government want to provide facilities for the man to know what the allegations against him are; but in another place that facility is also denied to him by giving power to the officer concerned to refuse to disclose the source of information, or if the officer feels that the application of the suspect is vexatious or is meant to cause delay the officer can refuse to hear his witnesses. That means that Government rely too much upon the Police Officers. They perhaps take them to be angels and truthful persons. The suspect may be quite innocent, but if the officer so desires the Bill empowers him not to disclose his sources of information and the man is sent out of the district. Under section 46A, the officer concerned will give in writing to the suspect the allegations before he passes an order and the nature of the allegations is also to be made known to the suspect. But under Section 46C the officer may keep his mouth shut and refuse to disclose the allegations or the source of his information. Thus, in one and the same breath the right of obtaining all information is taken away by section 46C. This is nothing else but giving very wide powers

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to the police officers, and it is objectionable. Under sub-section (2) of section 46A the police officer is given the powers of a Court. He can ask the man to attend his office and he can tell the man that there are certain allegations against him and that he is a danger to society. Then, under section 46B, when a proclamation of emergency is issued, the Provincial Government has given power to the police officer not to disclose the allegations on the basis of which the man will be hauled up and externed. This is nothing but absurd. An order is served upon a suspect in which nothing is mentioned against him and the man is sent out of the district. How is that man to know the nature of the allegations on the basis of which he is being sent out? All these clauses which conflict with each other show that the whole Bill is nothing else but a very carelessly thought out and carelessly drafted Bill. Perhaps, Government themselves are not aware of the wide implications of a Bill of this nature. The fact of denying a man the right to know the allegations against him can only be compared with the Inquisition of Spain. We know how that infamous body persecuted persons in Europe in the nineteenth century. Without even acquainting the people as to the nature of their offences they were persecuted, burnt alive and even sent to the gallows. This section 46C tries to create in the Province of Bombay conditions similar to those prevailing in Europe during the time there was the Inquisition in Spain. Are the Congressmen proud of this Spanish Inquisition ?

Then, look at sub-section (4) of section 46. Under this section, even for small offences, which are punishable under Chapters XII, XVI and XVII of the Indian Penal Code, the man may get the extreme punishment, namely, he may be externed. It has already been given out that even though the man may be guilty of simple hurt, yet under this section he can be sent out of the district for a long time. It will not be out of place if I narrate an incident in *Les Miserables*, a famous novel written by a French novelist.

The Hon. the SPEAKER : The hon. Member need not refer to a novel.

Mr. AHMED A. PATEL : It is an illustration which I am trying to give.

The Hon. the SPEAKER : Let the illustration be not from a novel.

Mr. AHMAD A. PATEL : The whole Bill seems like a fantastic story in a novel—

The Hon. the SPEAKER : The hon. Member will not give any illustration from any novel.

Mr. AHMAD A. PATEL : In olden times, under the French Code, a man was heinously dealt with even for the offence of theft. We know how a man unable to bear the pangs of hunger stole a piece of bread and how he was treated by the French police. We further know that this man was not allowed an opportunity to improve himself ; we also know that this very man afterwards became a leader of society and, in fact, the Mayor of a town and even then a police officer dogged his steps and proclaimed to the French authorities that this Mayor was the man who had been convicted for stealing a loaf. For this simple act of stealing a piece of bread to satisfy his hunger, the man is persecuted by the French police.

4-5 p.m.

Sir, under sub-section (4) of section 46, if a man is punished once for a simple hurt, is it not like repeating the same code of the French law of the middle ages ? Is the Ministry proud to repeat those primitive laws of the French Code ? I would appeal to the Minister-in-charge of the Bill to see his way,

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if not to withdraw the whole Bill, at least to mitigate the aspects of the clause by adding a proviso that a man may be given the ordinary protection of law to defend himself. The legal aspects of the clause have been very exhaustively dealt with by previous speakers. I shall not go into details any further. I simply tried to show the absurdities which are inherent in the section that I have already quoted.

As regards my amendments Nos. 24 and 25 relating to punishment, the original Act provided for maximum punishment. Here, the Minister in charge has thought it proper that he need not trust even the courts of law. Even for a simple hurt a man should not escape but he should be awarded the least punishment of six months. Perhaps Government thinks that the courts of law may give judgment in favour of the suspect.

Sir, in clause 7, the whole section 68 of the Act is substituted, and the propose section reads :

" Whoever disobeys an order lawfully made under section 42, 43 or 44....."

Now, section 42 relates to the carrying of weapons, arms, etc.; section 43 relates to the rights of a District Magistrate to temporarily close or take possession of any building or place etc. etc. and section 44 relates to the regulation of processions. My objection to section 68 is.....

The Hon. the SPEAKER : The hon. Member is transgressing the limits of the present clause. We are not going beyond clause 4 now. The hon. Member is referring to clause 7. Section 68 comes under clause 7, which is not before the House now.

Mr. AHMAD A. PATEL : Sir, my submission is as regards minimum punishment, and I hope the Minister in charge will see his way to at least give some latitude to the courts of law and only prescribe the maximum punishment under this sub-section. I hope my amendment will carry weight. Though the fate of the previous amendments is known to me, I am sure at last reason will prevail. If the ways in which this Province is to be governed are to be salient ways, then let this be a gesture on the part of the Minister in charge.

With these words, Sir, I commend my amendment to the House.

Mr. M. M. A. BHAIJI (Kolaba District) : Sir, before I proceed with each of the amendments that have been moved, I find a technical difficulty so far as sections 46A, 46B, 46C and 46D are concerned. It is a defect of drafting, for which I hold the Legal Department responsible.

If we look at clause 4 and if we go through sections 46A, 46B, 46C and 46D, it will appear that section 46A deals with the procedure for using the powers which have been conferred under section 46, which has been laid down in clause 3 of the present Bill. If we read section 46B, it deals with quite a different matter. It deals with additional powers under certain emergencies. Then section 46C lays down the procedure regarding non-disclosure of sources of information for orders passed under section 46A or 46B. Section 46D is quite a new section. I am unable to understand why different sections have been huddled up in one clause. There might not have been any objection if the Bill had been brought up with only two clauses, one regarding the name of the Act and the other dealing with all

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the amendments which Government wanted to incorporate in the District Police Act. So far as the rights of this House are concerned, I think that it will be a good thing if the different matters which are being sought to be incorporated in the law of the land are put under different clauses, so that Members of the House may think coolly and dispassionately over every matter that has to be incorporated.

Now, Sir, coming to the proposed section 46B and the amendment of my hon. Friend Mr. Shamsuddin about the deletion of the whole clause, I think that there is very little difference between the proposed new section 46 and section 46B. Although there is some difference, the Government in replying to the arguments made by the Opposition, was at its loudest to show that this Bill has been brought in to curb the activities of the *goondas* and that there is no intention of doing away with other political or any other legitimate activities of any character, political, non-political or otherwise. May I know why while these powers are being taken under section 46 to curb the *goondas*, a new section is being sought to be added in the guise of 46B ? I would like to know from the Hon. Minister in charge as to for whom this section 46B is meant. I think it is in the fitness of things if he replies immediately to my question, so that I can discuss the provisions of this section further.

Mr. DINKERRAO N. DESAI : It is exactly the provision taken from the City of Bombay Police Act.

Mr. M. M. A. BHAIJI : To take provisions from here and there is no excuse at all. There must be some other reason for the incorporation of this provision in this Bill. We cannot understand the logic that provisions in one Act should also be automatically incorporated in another Act.

I have said that there are slight differences between sections 46A and 46B, whereas section 46 is made applicable to, or is to be used in the case of, persons who use violent methods. Section 46B does not mention anything about violence as such. The actual words used are :

" the presence, movements or acts of any person in the district is or are causing or calculated to cause danger or alarm, or that a reasonable suspicion exists that designs calculated to disturb public peace or tranquillity are entertained by such person."

and taking into account the term " public peace ", if I may be allowed to give an instance, I would place before the House an illustration from the recent communal riots in one of our important cities. That is a report which I got, that after the enforcement of curfew hours, slogans were raised from one building in a very loud voice which were echoed from another building and a third building, and the police came at once and began resorting to fire. I do not know if that can be called a disturbance of public peace. Possibly, it might cause disturbance of sleep in that particular street or locality. The point I want to emphasise is that this section does not speak of violence as such and it is to be used only when a proclamation is issued. That is what has been given under sub-section (*3*) of the proposed section.

Sub-section (*2*) tries to limit the duration of the proclamation of emergency to one month and there is also a provision to extend it, but generally its limit will not be more than a month.

But if you read further, sub-section (*3*) gives three alternative powers to the Magistrate in cases where a man is suspected of behaviour which is likely to cause

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alarm or danger to public peace. They are : (1) the Magistrate may ask him to conduct himself in a particular way, or (2) the suspect may be detained and (3) deportation.

Sir, if the proclamation is to last for a month only, why have Government become so miserly as not to detain a particular person and feed him for a month, and why should Government want that extraordinary power of deporting him ? Is it because Government cannot afford to spend on his feeding for one month ? It appears rather fantastic.

Then, whatever order has been passed under this sub-section is not to be revealed to anybody and as sub-section (*4*) says a copy of every such order of detention made under sub-section (*3*) will be submitted by the Magistrate to the Provincial Government, I do not know if this section is going to be made applicable to the habitual *goonda* only and not to respectable persons. If this section is not going to be made applicable to respectable persons, then why are the orders to be passed under this section not to be questioned in a court of law ? Certainly, this is a power which no executive in the history of the world must have enjoyed. Sir, the other day it was pointed out to us that we were saying that this Government is following the footsteps of Hitler, and we were reminded that if we had been in Germany we would not have been allowed to sit on these benches. I think that argument is overdone, for, if I remember rightly, Hitler in the beginning of his assumption of power made use of the Reichstag, and took steps to pass certain laws, but when he became powerful, he did away with them. Possibly, the same fate may await us here, and that is the way the provisions of this Bill are pointing us out. Sir, Government want to pass this Bill by commanding all members of their party as Hitler commanded the majority of the Nazi Party. And this majority is to be used for giving more powers to the executive and debarring all right of appeal to the judiciary.

Sir, if we look to the harshness of this particular section, I think that the hon. Member Mr. Shamsuddin is right in moving for the deletion of this clause. If provision has been made under section 46 to deport or detain or to ask a *goonda* to behave in a particular manner if he is likely to resort to any violent activity, what is the necessity of adding this particular provision ? It appears to me that Government under the existing law of the land are not able to control people and are unable to maintain law and order, and because of this failure they are feverishly thinking of taking some more powers, possibly in the honest belief that by doing so they will be able to maintain law and order. But my humble submission to Government is that it is not by passing a number of repressive measures and by taking additional powers but by other methods, which I shall mention later, that they can maintain law and order. In their feverishness to take more and more powers, Government are adding sections after sections in the hope that by such means they will be able to deal with the situation. They feel that the powers taken under section 46 are not sufficient, and in order to deal with conflicts between different communities or sections thereof, or gangs or factions, they must have additional powers, and these they seek to have under section 46B. To my mind, all these fears in the mind of Government are unnecessary and I think section 46 would be quite sufficient for all purposes, provided that Government try to follow honest methods in dealing with the situations which arise from time to time. Because they have not followed such methods, they have come into trouble.

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by amendment No. 18. If the emergency is to last for a month or so, I do not think such a provision is necessary under the section. It may have been proper so far as section 46 is concerned, which is meant to deal with habitual offenders or with men resorting to violence. But in the case of disturbances which are not likely to last for a month but much less, why should a man be deported for that period from his sweet home? Will it not be possible for the Government to detain the suspect for a short period? Are Government afraid of having to bear his food expenses? I think that should not be the excuse. This is the best amendment which Government can accept and prove that they are responsive to the legitimate opinion and constructive suggestions of the Opposition.

I now come to amendments Nos. 19 and 20. Although they have been moved by two hon. Members, they deal with the same thing and are worded also in like language. They deal with the proposed section 46C in which it is laid down:

> "Nothing contained in section 46A or 46B shall require the Magistrate or any officer to disclose—
> (*a*) to the person against whom an order is made under sub-section (*1*), (*3*) or (*4*) of section 46 or sub-section (*3*) of section 46B, or.
> (*b*) to the Court,....."

There are two matters that have been provided in that section; that the source of information which led the Magistrate to pass an order against a suspect or any other fact may not be divulged to the suspect, and that it cannot be divulged even in a court of law. This is grabbing too much power. Government do not want that even an ordinary court of justice should come in its way; and that, too, not only for people who commit violence, but even for ordinary people against whom Government may like to proceed for reasons of their own. As my hon. Friend Mr. Quwari has already said, it is a very wide power. One can understand it if the person for whom this power is sought to be assumed is afraid of a "*goonda*" or a person who is likely to commit physical injury to the man who gave information against him. But what is there for him to be afraid of from an ordinary citizen? Sir, if we read clause 46B, it seems it is not meant against a person who commits or is likely to commit any violent act only, but even against one who makes a speech that is supposed to spread trouble or disturb public peace and tranquillity. I think people who make speeches cannot indulge in violence or do any injury to the person who gives any information against him. The method which has been followed in drafting these sections appears to be that something should be written whether it is justifiable or not. The amendment of my hon. friend Mr. Shamsuddin is worth the consideration of the House.

Amendment No. 21 of my hon. friend Mr. Quwari, seeks to provide that the man alleged against should be informed as to what are the charges or allegations against him and of the name of the person who has made the allegation so that the person alleged against would be able to give an explanation as to whether the allegations made are true or they are merely made on the advice or prejudice of somebody. It may happen that an opponent of a man may go and make allegations against the man and then say to the Magistrate: "If my name is given out, I am likely to be misunderstood by the person against whom I am making the charges and my position will become awkward. I am giving this information, and anyhow my name should not come out". The Magistrate, just to hide or save the position of the man, may not like to give his name out to the person against whom the chargee are made. I am illustrating the case of two ordinary people who may not have resorted to any violent act. Both of them may be respectable persons, leading

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As regards the amendment of my hon. Friend Mr. Quwari, it seeks to delete only a few words from the proposed section 46B.

The Hon. the SPEAKER : Is the hon. Member likely to take long ?

Mr. M. M. A. BHAIJI : Yes, Sir, if I am allowed to have my own time.

[Recess from 4-30 p.m. to 5 p.m.].

Mr. M. M. A. BHAIJI : Sir, I was referring to amendment No. 17 which seeks to delete the words " different communities or sections thereof or " from section 46B (1) when the House rose for tea. I do not understand why such arbitrary power is being taken by Government when in the event of conflict between different communities or sections thereof there is already a provision in the existing penal law of the land—I think section 153 of the Indian Penal Code—under which Government can straightaway proceed against those people who are responsible for fomenting communal troubles. These arbitrary powers will not quell the communal feelings which, I am sorry to say, have been exacerbated to the farthest limit. It is by toleration and mutual understanding of the different points of view that we can avoid communal troubles. And as the matter is under consideration I feel it my duty to say that the responsibility lies on the shoulders of the majority community, the Hindus and this Government, to behave in such a way that confidence is created in the minds of other communities. I have known that the Hindus have a narrow mentality and I have known instances of it and I have actually seen them. The host sits apart from the guest if he does not belong to his own caste. One certainly detests such a mentality. This mentality has not disappeared, as the Hon. Minister says, and I can give an instance which happened only two years back, but I need not dilate on this point as this is a small matter. What I am suggesting is that it is by changing your attitude and by extending your vision and outlook that communal factions can be avoided and not by taking arbitrary powers.

There is yet another danger in giving arbitrary powers to the executive officers of the district. In the present as well as future times these officers are likely to belong to either of the two communities, the Hindus and Muslims. The communal troubles also, in most cases, will take place between these two major communities. Therefore, the District Magistrate or the executive officer of the district who will belong generally to either of the two communities will side with the community to which he belongs and it cannot be expected that he will hold the scales even. So it is better that these powers should not be given to executive officers but should be left with the judicial authorities who shall deal with the suspects impartially and proper justice will be done. I, therefore, commend, in the event of Government not accepting the amendment of my hon. Friend Mr. Shamsuddin, the amendment moved by my hon. Friend Mr. Quwari. This is the least that Government can do.

Now I shall come to amendment No. 18. Here Government is trying to go a step further. Under clause (*b*) of section 46B (1) the Magistrate is empowered to deport a man outside the Province or to some other place within the Province, if in his opinion the person is causing or is likely to cause danger or alarm or a reasonable suspicion exists that designs calculated to disturb public peace or tranquillity are entertained by such person. This provision is sought to be deleted

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a peaceful life. Such cases are likely to arise, and it is the duty of the Legislature to see that such innocent persons are not unnecessarily harassed by the law we pass, or by the laws to which we give our assent.

Amendment No. 18A of the hon. Member Mr. Chakranarayan is a very reasonable amendment. He gives, by the amendment, to the person against whom allegation is made and who may be a respectable gentleman the right to approach a Court of Sessions for immediate relief or to a writ of *Habeas Corpus* in the High Court. If we cannot make provision as is suggested by the hon. Member Mr. Chakranarayan, we think we shall be open to the charge that we do not know what is civilised law, and what is civilised justice. Personally, I believe that even a *goonda*, although he may be an anti-social element, is, after all, a man. He has become a *goonda* because circumstances have placed him in that category, but above all, he is a man, and why should we deny even to him elementary human rights? I know the opposite Party believes in the principle of non-violence and *ahimsa*, and that they want to exend that principle to the animal world, but I feel that they would not like to extend it to *goondas*. I think this elementary right of going to a court of law should also be available to a social decrepit, whom you call a *goonda* or anti-social element. Now, even if Government does not want to give him any such right, at least it should give that right to the person who may be dealt under section 46B. So far as my reading of that sub-section goes, it is not made applicable to the so-called *goonda*. I cannot call that man a *goonda*, but merely a man who has unfortunately been placed in that position by circumstances.

Then I come to section 46D which lays down the procedure on the failure of a person to leave the district and his entry therein after removal. I know that the Minister in charge will only reply to any arguments that I advance on this clause by saying that it was included in the City Police Act in the year 1938. That is his patent reply. But I cannot understand why a mistake committed previously should be committed again and again. I think the City Police Act of 1938 was brought in to circumvent the decision of the High Court in a particular case, and that was a very foolish act on the part of the Government of that date.

The Hon. the SPEAKER: Order, order! That expression had better be avoided.

Mr. M. M. A. BHAIJI: That was an undesirable or inadvisable act on the part of the then Government. They got that Act passed in order to circumvent an order of the High Court. Now the judiciary is part and parcel of our State and unless we look with respect to the decisions of the judiciary, I think it will be a very difficult job to run the affairs of the State in a proper and just manner.

Then, Sir, under sub-section (2) of section 46D, not only the maximum punishment has been prescribed, but also the minimum punishment. I feel this is against all principles of jurisprudence. In certain sections of the Indian Penal Code such provisions have been made, and my hon. Friend Mr. Chakranarayan has stated this. My argument is that the Indian Penal Code was drafted in the nineteenth century, and it was drafted by persons whom we would call anything but good, so far as their enactments in India are concerned. Therefore, it will be inadvisable on our part to follow what is done in the Indian Penal Code. This provision of the minimum punishment is very harsh and unbecoming of a Government which claims to have come in power with popular support.

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Sir, I have already said that Section 46D should not form part of the Bill, and should not go on the statute book. There is already a provision for such contingencies made in Section 46. It seems that Government want to deport not only persons who resort to violence, or who are likely to resort to violence, but also those who do not agree with their views. That is my reading of this Section 46D. Nothing is mentioned about violence therein. If I speak some harsh words, it is likely that they may affect the sentiments of another man who may not agree with those views, and he may kick up a row and represent to the officer that I am likely to commit a breach of the peace, and then I will have to suffer the consequences mentioned in this Bill. Sir, society can hardly go on unless there is the spirit of accommodation for others' views, and therefore Government should not give such drastic powers into the hands of their officers, as it is possible that they may use them against those who differ from their views, and deport or detain them. That is not the way in which you can propagate the cult of democracy. Every one is asking for freedom at present, and I think it will be in the fitness of things when India is at the doors of freedom, if Government come and say "We will withdraw this Bill and leave it to the good sense of the people to behave themselves".

Sir, with these words, I support all the amendments that have been moved by the different Members. I know that owing to the number of amendments being very large, I have not been able to do full justice to every one of them because it creates confusion to deal with all of them at one and the same time. My appeal to Government is that they should see their way to accepting the modifications which hon. Members of the Opposition have suggested and thus extend their hand of co-operation to us and show that they have a sense of responsiveness to the constructive suggestions put before them by this side of the House.

Mr. FAZLEABBAS T. ZAMINDAR (Kaira District):

مسٹر فضل عباس طیب علي زمیندار:—

جناب صدر! ہاؤس کي اپوزیشن (Opposition) کي طرف سے اس بل کي کلاز نمبر ۴ کے سلسلے میں جو ترمیمات پیش کي گئي ہیں امید ہے کہ ان کي تائید اپوزیشن کے سب ممبران کرینگے — لیکن Treasury Benches کے اوپر شک ہے کہ وہ ان ترمیموں کو منظور نہیں کرینگے — Cut Short اس کا نتیجہ یہ ہوگا کہ (۱) انصاف کي موت ہوگي (۲) پولیس راج کا دور دورہ ہوجائیگا — میں حتي الوسیع کوشش کرونگا کہ کسی بات کي Repitition نہ ہو تاہم جو جذبات قدرتي طور پر دل میں جاگزیں ہوتے ہیں — ان کو دبانا مشکل امر ہے — میں اپنے ڈسٹرکٹ کي Example دیتا ہوں کہ پولیس بھي لوکل کانگریس ورکرز کو پوچھے بغیر کوئي کام نہیں کرتي — میرے دوست مسٹر بابو بھائي پٹیل بھي اس قصے کي گواہي دینگے —

[Mr. F. T. Zamindar]

مسلمانون کي کوئي بات چل رہي تھي انہون نے بھي Interest ليا يعني بابو بھائي پٹيل صاحب نے گواہون کو بلاکر D.S.P. سے کہا کہ Enquiry کي جائے - جب مين نے کہا کہ باہر کي پوليس ٹھيک Enquiry نہين کرسکيگي ليکن اس مين ميري شنوائي نہين ہوئي مسٹر بابو بھائي پٹيل کو مين موقع ديتا ہون کہ وہ اس واقعہ کي تصديق کرين - D.S.P. نے کہا کہ کانگريس والے ہمارے آقا ہين اس لئے ان کے کہنے کے مطابق Enquiry کي جائيگي اور ان کے کہنے پر ہم کسي کام سے انکار نہين کرسکتے

The Hon. the SPEAKER: I would draw the attention of the hon. Member to the fact that the views expressed by other hon. Members need not be repeated. That certain powers are being given to the district officers and that these powers may not properly be used by them has been said by more than one hon. Member, and the same arguments need not be repeated. It is difficult for the Chair to remember them; some time will have to be spent in pointing them out. Therefore, if the hon. Members keep themselves within proper limits, that will be very good co-operation with the Chair.

Mr. BABUBHAI J. PATEL: May I rise on a point of explanation, Sir? The position was that in an enquiry in wich I myself was the complainant, I requested the District Superintendent of Police to have an impartial enquiry in which the complainant, the person against whom the complaint was lodged, and any other person could be present. And, in that enquiry, he allowed me to be present, he intimated to the other party to be present, and the hon. Gentleman himself was present.

Mr. FAZLEABBAS T. ZAMINDAR:

جناب صدر! مين اس کا خلاصہ کرنا ضروري نہين سمجھتا - اگر مين ايسا کرون تو اس کا کوئي نتيجہ برآمد نہين ہوگا - مختصر يہ کہ اس واقعہ کي رپورٹ پہلے سب انسپکٹر کے روبرو کي گئي - پھر انسپکٹر پوليس کے سامنے پيش ہوئي جسمين D.S.P. نے کہا کہ مسلمانون کے خلاف کوئي بات نہين ہے D.S.P. نے خود بھي اس بات کي Enquiry اپنے ہاتھ مين لي تھي مگر نتيجہ خاطرخواہ نہ نکل سکا - مسلمانون کي شنوائي نہين ہوئي - اب اس بل کے ذريعہ سے گورنمنٹ رعايا کي حفاظت کرنا چاہتي ہے مگر يہ بل بھي کارگر ثابت نہين ہوگا اور آپ کا جو مقصد ہے وہ اس سے حل نہين ہوگا - مسلمانون کي جائز آواز کو آپ دبا نہين سکينگے - مين صرف ايک ہي جملہ کہہ کر اپني جگہ لونگا -

[Mr. F. T. Zamindar]

مہاتما گاندھي جي نے آپ کو حکم دیا تھا کہ اہنسا کے ذریعہ سے
پ لوگون کي خدمت کرنا - کیونکہ اہنسا ہي سے لوگون کي ٹھیک
حفاظت ہوسکتي ھے - لیکن مین Treasury Benches سے پوچھتا ہون کہ آیا
یہ بل اہنسا کے اصولون پر مبني ھے؟ میرے خیال مین تو یہ ایک
بدتر بل ھے اور جس مقصد کے لئے اس کے ذریعہ سے کوشش کي جارہي
وہ آئین سے حل نہین ہوگا - بلکہ اس مین زیادتي ہوگي - لوگون کے
دلون مین آجکل یہ خیال ھے کہ مسلم لیگ اور کانگریس کے بیچ مین
سمجھوتہ ہونیوالا ھے لیکن میں سمجھتا ہون کہ اس بل کے ذریعہ سے اس
اُمید کو مٹانے کي کوشش کي گئي ھے - مسٹر شمس الدین اور مسٹر کواري
نے جو Amendments رکھي ہین مین ان کي پرزور تائید کرتا ہون

(*Substance of the above in English*).

The Bill is very harsh and unnecessary as it is likely to worsen the communal feelings and retard the progress of Congress and Muslim League negotiations. Experience shows that the police is being dictated to by their Congress masters and therefore it has been working partially. It seems to be the worst Bill, in view of Mahatma Gandhi's principle of non-violence which the Congress Ministry is expected to follow. The object of the Government will not be gained by passing this Bill.

Mr. MOHAMED UMAR RAJAB (Bombay City North and Bombay Suburban District):

مسٹر محمد عمر رجب: صاحب صدر! جنني ترمیمات ہماري پارٹي کي
طرف سے پیش ہوئی ہین اور جو مسٹر چکرانرائن نے پیش کي ہین اُن سب
کي مین پرزور تائید کرتا ہون - یہ ترمیمات بل کي کلاز نمبر ۴ کے متعلق
پیش ہوئي ہین - اس کلاز کے کچھ حصون کو پڑھنے سے یہ معلوم ہوتا
ھے کہ جب حکومت کو کسي آدمي - کسي گروہ یا کسي ایک یا دو
قوموں کے باہم لڑنیکے خطرے کا احتمال ہو تو گورنمنٹ emergency declare
کریگي اور اس کے بعد پولیس کو اختیار ہوجاتا ھے کہ وہ جسے چاھے اسے
گرفتار کرلے - اور جو الزام اس کا جي چاھے کسي پر لگادے محض
شک کي بنا پر کسي کو گرفتار کیا جاسکتا ھے اس بل کي رو سے - یہي
نہین بلکہ مجسٹریٹ محض شک کي بنا پر کسي کو شہر بدر کرسکتا ھے
اور اسے ایک صوبے سے دوسرے صوبہ مین بھیج سکتا ھے - میري سمجھ

[Mr. Mohamed Umar Rajab]

میں نہیں آتا کہ کھلے بندوں اور روزروشن میں حکمران پارٹی کسطرح انصاف کا خون کرتی ہے۔ قانون مروجہ تو یہ ہے کہ اگر کسی قاتل کے متعلق۔ کسی خونی کے متعلق بھی شبہ پیدا ہوجاتا ہے عدالت کی کارروائی کے دوران میں جس سے یہ معلوم ہوتا ہو کہ یہ خونی نہیں ہے یا اس جرم میں ملزم کا ہاتھ نہیں ہے تو اس شک کا فائدہ خونی ملزم کو ملتا ہے۔ یعنی benefit of doubt accused کو ملتا ہے۔ لیکن اس بل میں اُلٹی گنگا بہہ رہی ہے۔ کیونکہ شبہ کی بنا پر اگر کسی کو گرفتار کیا جائیگا تو اس شبہ کا فائدہ Complainant کو دیا جائیگا۔ وہ مشتبہ آدمی شہر بدر کردیا جاتا ہے۔ یہ صریح انصاف کا خون نہیں تو اور کیا ہے؟ کیا اسی طرح سے آپ اپنی کارروائیوں میں انصاف کرنے کو تیار ہیں؟ جب آپ انصاف کے خلاف کوئی کارروائی کرینگے تو کیا لوگ اسکو اچھا سمجھینگے؟ اس بل کی یہ کلاز پڑھکر منسٹری کے دعووں کے متعلق ہی نہیں بلکہ اگر میں یہ کہوں کہ اسکی نیت میں فرق کا شبہ ہوتا ہے تو بےجا نہ ہوگا۔ دراصل وہ فساد کو دور کرنے کے لئے نہیں بلکہ مخالف پارٹی کو دبانے کے لئے ایسی کارروائی کررہی ہے۔ میں ان کا motive اس طرف attribute کرتا ہوں۔ اس کا مجھے حق ہے۔ گو آپ کہینگے کہ ہمارا motive یہ نہیں ہے۔ جو کچھ بل میں لکھا ہوا ہے اس کے پیش نظر مجھے خطرہ پیدا ہوگیا ہے کہ یہ بل نہایت خطرناک ہوگا۔ ہر شخص اپنی رائے قائم کرسکتا ہے اس لئے میں اتنی جرأت کرتا ہوں کہ اس بل کے متعلق motive منسٹری کی طرف attribute کروں۔ کہ انہوں نے بددیانتی کے ساتھ اس بل کو پیش کیا ہے

The Hon. the SPEAKER: I have drawn the attention of the hon. Members on several occasions to the fact that it is not proper to attribute motives to any hon. Member.

Mr. MOHAMED UMAR RAJAB:—

جناب صدر! میں نے حتےالوسع اس سے احتراز کیا ہے لیکن ابھی تھوڑی دیر قبل یہ کہا گیا تھا کہ بل میں جو کچھ تحریر ہے اس سے ہر ممبر اپنی سمجھ کے مطابق رائے قائم کرسکتا ہے۔ بات ہی ایسی ہے کہ

[Mr. Mohamed Umar Rajab]

مجبوراً کہنا پڑتا ہے کہ ایسا انصاف حکومت کی طرف سے اس بل کی رو سے ہونے والا ہے اپنے خیال کا اظہار کرتا ہوں۔ ممکن ہے کہ حکومت ایسا نہ کرے

The Hon. the SPEAKER: Order, order! If the Bill is passed into law it will have its effect, but while debating it is not proper to attribute any motives to any hon. Member of this House.

Mr. MOHAMED UMAR RAJAB:—

منسٹری خود ہی اعتراض کا موقع دیتی ہے۔ بہرحال میرا کہنا یہ ہے کہ محض شک کی بنا پر جس کا فائدہ ملزم کو ملنا چاہئے اس کو گرفتار کرکے سزا دیجائیگی۔ اور سزا بھی کتنی سخت! محض شک کی بنا پر کسی آدمی کو شہر سے باہر بھیج دیا جائیگا۔ تو اس کا کیا نتیجہ برآمد ہوگا۔ فرض کرو کہ اگر گرفتارشدہ یا سزایافتہ ایسا شخص بعد میں بے گناہ ثابت ہوا تو وہ مفت میں ذلیل ہوا۔ اور اگر وہ خوددار۔ غیرت مند اور جوانمرد ہوگا اور اس کو معلوم ہوگا کہ بے گناہ ہونے کے باوجود اس کو زبردستی سزا دیگئی تھی اور اس کے ساتھ برائی کی گئی تھی تو وہ اس کا بدلہ لینے اور انتقام لینے کی کوشش کریگا۔ اس لئے کہ بے گناہ ہوتے ہوئے اس کے ساتھ زیادتی کی گئی اس کے گھر بار کو برباد اور اہل وعیال کو پریشان کیا گیا۔ بلاوجہ تو کوئی خوددار آدمی اس بے عزتی کو برداشت نہیں کرسکتا وہ شخص desperate ہوجائیگا۔ فرض کیجئے کہ اگر کوئی غنڈا یا بدمعاش ہو اور اس کو اس صوبے میں سے دوسرے صوبے یعنی C. P. U. P. یا بنگال میں بھیج دیا گیا تو اس کا نتیجہ کیا ہوگا؟ یہی ہوگا کہ وہاں بھی غنڈے ہیں۔ وہاں بھی بدمعاش ہیں۔ ان کے tricks اور technics سیکھ جائیگا کالبادیوی میں رہنے والے غنڈوں کے اور طریقے ہیں اور کلکتہ کے رہنے والوں کے اور۔ ہر جگہ جرائم پیشہ لوگوں کے طریقے جدا جدا ہوتے ہیں۔ اگر آپ نے بمبئی یا پونہ سے کسی بدمعاش کو۔ بنگال۔ سی۔ پی یا یو۔ پی میں بھیج دیا تو وہاں کے جرائم پیشہ لوگوں میں کارآمد اضافہ ہوا۔ اس لئے کہ اب تک وہ اپنے ہاں کے ہی technics اور جرائم کے طریقہ سے آگاہ تھے ان کو

[Mr. Mohamed Umar Rajab]

پہلے یہ معلوم نہیں تھا کہ بمبئی میں کیسے جرائم کئے جاتے ہیں لیکن جب بمبئی کا غنڈا وہاں پہنچا تو وہ وہاں کے غنڈوں کو بتائیگا کہ ہم اس طریقے کے جرم کیا کرتے ہیں اور وہ خود دوسرے صوبوں کے جرائم اور طریقوں سے واقف ہوجائیگا۔ جب میعاد ختم ہونے پر واپس بمبئی میں آئیگا تو وہ اور سیکھکر آئیگا تو اور جرائم میں اضافہ ہوگا۔ تھوڑی دیر کے لئے مان لو کہ آپ نے اس کو دوبارہ بمبئی آنے سے روک دیا اور کہہ دیا کہ زندگی بھر بمبئی نہ آنا۔ اس سے آپ نے اپنے شہر کی حفاظت تو قرار دے لی لیکن آپ اس کو کیسے گوارا کرینگے کہ بمبئی میں امن رہے اور سی۔پی میں خون بہے۔ فساد ہو؟ سی۔پی میں فساد ہوگا تو بھی یقیناً آپ کو دکھ ہوگا۔ اگر وہ زندگی بھر یہاں نہیں آئیگا تو وہ جہاں رہیگا وہاں اپنے جرم کے طریقے سکھائیگا۔ اور وہاں جرائم میں اضافہ ہوگا۔ کیا یہ انصاف ہے کہ آپ کے شہر کا غنڈا وہاں کی حکومت کو پریشان کرے؟ اور پھر کوئی وجہ نہیں کہ سی۔پی کی حکومت بھی ایسا قانون نہ بنائے۔ اس لئے کہ میں دیکھتا ہوں کہ اس حکومت کی پالیسی یہ ہوگئی ہے کہ کبھی Home ministers کی meeting کرتی ہے کبھی آل انڈیا Labour ministers کی میٹنگ بلاتی ہے تاکہ ایک ہی قسم کے قوانین بنانے میں ارتباط رہے۔ اس لئے بمبئی گورمنٹ کے اس بل کو دیکھکر دوسرے صوبوں والے بھی تقلید کرینگے نتیجہ یہ ہوگا کہ خوب دھی جوکڑی مچیگی۔ اور پھر یہاں کا gang ہو۔ بی اور بہار وغیرہ میں جائیگا۔ ایسا ہوتا ہی آیا ہے۔ مثال کے طور پر راجہ مہندرپرتاپ جاپان سے آکر وہاں کے حالات بتارہے ہیں۔ مسٹر شاہنواز I. N. A. (Indian National Army) سے آکر آپ کے Volunteers کو train کرتے ہیں۔ یہی چیزیں غنڈے بھی کرینگے۔ اس لئے فسادات میں کیسے کمی ہوگی۔ تو پھر آپ کیوں ایسی حرکت کرتے ہیں۔ جس سے کسی جگہ بھی امن رہنا دشوار نہیں بلکہ ناممکن ہوجائے۔ اگر آپ کی پولیس کسی غنڈے کو extern کریگی تو دوسرے صوبے والے اس غنڈے کو رکھنا کیسے گوارہ کرینگے۔ وہ بھی کہینگے کہ نکل جاؤ یہاں سے بھی۔ ایک ایسا واقعہ بمبئی میں ہوا ہے جس کی طرف

[Mr. Mohamed Umar Rajab]

میرے دوست مسٹر (احمد) پٹیل نے اشارہ کیا تھا۔ انہوں نے بتایا کہ وہ آدمی بمبئی پریزیڈنسی سے extern کیا گیا شاید ان کے خیال سے اتر گیا حقیقت یہ ہے کہ یہ شخص برٹش انڈیا سے باہر کیا گیا تھا جہاں سے وہ رام پور گیا وہاں سے رام پور کی حکومت نے extern کیا محض اسلئے کہ وہ بمبئی سے باہر کیا گیا تھا۔ اب وہ کیا کریگا وہ رام پور سے نکل کر برٹش انڈیا میں آنے کے لئے یقیناً خلاف ورزی قانون کی کریگا۔ کیونکہ وہ جائیگا کہاں؟ دوسری کوئی انڈین اسٹیٹ اس ریاست سے ملی ہوئی نہیں ہے جہاں وہ جاسکے۔ غنڈا خودکشی بھی نہیں کیا کرتا۔ کیونکہ non-violent خودکشی اس سے نہیں ہوسکتی

The Hon. the SPEAKER: There should be no conversation across the table.

Mr. MOHAMED UMAR RAJAB:—

غنڈہ خودکشی نہیں کریگا۔ جب اسے کوئی جگہ نہیں ملیگی تو وہ underground ہوگا۔ آپ انڈرگراؤنڈ چلا جائیگا۔ اس طرح آپ اپنے صوبے کے انڈرگراؤنڈ اشخاص میں اضافہ کرتے ہیں انڈرگراؤنڈ gang میں ایک کا اضافہ کرتے ہیں۔ وہ جھپ کر یہیں جرم کریگا دوسرے صوبوں والے بھی اسے رہنے نہیں دیتے اور نہ دوسرے شہروں کو وہ جاسکتا ہے۔ اس لئے یہیں جھپ کر وہ جرم کیا کریگا۔ اور اس طرح ان کی تعداد زیادہ بڑھیگی۔ Section 460 کے متعلق مسٹر پٹیل صاحب کی ایک امنڈمنٹ (amendment) ہے اس سیکشن میں لکھا ہے کہ information جس کی بنا پر ایک غنڈے کو یا سیدھے سادھے آدمی کو arrest کیا جائیگا وہ leak out نہیں ہوگی وہ بتلائی نہیں جائیگی۔ وہ defence نہیں کرسکیگا۔ میں repeat نہیں کرونگا۔ یہ argument پہلے بھی پیش ہوئی ہیں۔ میں ایک مثال پیش کرونگا بمبئی کے فساد کے سلسلہ میں۔ وہ یہ ہے کہ ۵ ستمبر سنہ ۱۹۴۶ع سے پہلے ایک اعلان گورنمنٹ کی طرف سے کیا گیا تھا کہ اپنے اپنے محلے میں ہر ہندو مسلمان یہ کوشش کرے کہ اگر کوئی بدمعاش یا غنڈہ وہاں ہو اور ایسا کوئی آدمی ہو جس سے فساد کا خطرہ ہو تو پولیس کو اطلاع دے تاکہ وہ فساد روکا جاسکے۔ مقصد یہ ہے کہ بدمعاشوں کو پولیس لیجاسکے اور یہ وعدہ

[Mr. Mohamed Umar Rajab]

کہا گیا تھا کہ بتانے والوں کے نام ظاہر نہیں کئے جائینگے - میں ایک Case کی مثال دیتا ہوں - بمبئی میں مدن پورے میں میں رہتا ہوں وہاں کی حالت کی مجھے واقفیت ہے وہاں کئی weavers کی organisations ہیں - ان میں سے ایک ایسی ہے جو کانگریس کے آدمیوں کی سرپرستی میں چل رہی ہے - کسی بات پر آپس میں ان کا تنازعہ پیدا ہوگیا - کچھ آدمی ایک پارٹی سے نکل کر دوسری پارٹی میں شامل ہوگئے ان کو ناگوار گزرا - اسکے بعد انہوں نے سوچا کہ اس اعلان سے فائدہ اٹھانا چاہئے ہیں چنانچہ انہوں نے پولیس کمشنر کو کانگریس کی معرفت خبر پہنچائی - بھلا سیدھے سادھے آدمیوں کو پولیس کمشنر کہاں پوچھتے ہیں - غریبوں کی بات پولیس میں کون سنتا ہے اس لئے کانگریس کے بااثر لوگوں کے ذریعہ سے خبر پہنچائی گئی - پولیس اسٹیشن پر وہ لوگ بلائے گئے - میں بھی پولیس اسٹیشن پر پہونچا دریافت کیا گیا کہ یہ کون کون لوگ اور کیسے ہیں؟ میں نے بتایا کہ سب شریف لوگ ہیں اور کبھی ان کو سزا نہیں ہوئی - انہوں نے کسی بری تحریک میں حصہ نہیں لیا ہے - پولیس نے کہا کہ اچھا مجبوری کی بات ہے - ان کو چھوڑ دیتے ہیں - بھلا ویسے وہ کیوں چھوڑتے ممکن ہے میری صورت دیکھکر کہ ایم - ایل - اے ہے ان کو چھوڑ دیا ہوگا

دوسرا واقعہ یہ ہے کہ ہمارے محلے میں ایک شخص رہتا ہے اس کا کوئی قصور نہیں تھا ہاں اتنا ضرور ہے کہ سو آدمیوں میں کھڑا کردیا جائے تو سب میں سے موٹا تازہ ہوگا - اس ہاؤس میں اتنا موٹا تازہ کوئی نہیں ہے - پولیس کہتی ہے کہ وہ غنڈہ ہے اسے گرفتار کرلیا گیا ہے - صرف اس لئے کہ وقت پڑنے پر وہ اپنی حفاظت کرسکتا ہے - لیکن کیا تندرست رہنا ہمارا حق نہیں ہے - کیا ہم تنومند نہ ہوں؟ کیا بمبئی میں ہماری گورنمنٹ ہمیں سستے داموں دودھ نہیں پلاتی ہے تندرستی کو قائم رکھنے کے لئے؟ کیا اتنا نتیجہ ہے؟ جو تندرست ہو اس کو غنڈہ کہا جائے!

[Mr. Mohamed Umar Rajab]

ایک مثال اور دیتا ہون تاریخ ۹-۹-۴۶ کا واقعہ ہے - ہمارے محلے مدن پورے میں ایک حصہ مومن پورہ کہلاتا ہے - وہاں کرفیو کے وقت سے نصف گھنٹہ قبل مسلمانون کے پردہ والے گھرون میں پولیس گئی اور پردہ نشین عورتون کو بے نقاب کیا گیا - سب بوڑھون - بچون اور جوانون کو پولیس گھرون سے باہر نکال لائی - پھر بچون اور بوڑھون کو واپس بھیجدیا باقی جو ۳۶ کے قریب جوان تھے ان میں سے Government servants کو بھی چھوڑ دیا باقیون کو گرفتار کر کے پولیس لیگئی محض شک کی بنا پر - چنانچہ میں اس سلسلہ میں پولیس اسٹیشن پر جاتا ہون - میں نے کہا کہ ان کے خلاف تو کوئی الزام نہیں ہے پھر کیون پکڑتے ہو؟ پولیس نے جواب دیا کہ انہیں دو ماہ کے لئے detain کیا جائیگا کیونکہ دس روز پہلے ایک بدمعاش اس راستہ سے بھاگتا ہوا دکھائی دیا تھا - محض شک کی بنا پر ایسی ایسی گرفتاریاں ہوتی ہیں، پھر deportation چلیگی - اگر زبردستی کسی کو صرف غنڈہ سمجھکر پریشان کیا جائیگا تو وہ غنڈہ آپ سے بدلہ لیگا - اس لئے کہ یہ ان کا کام ہے - شریف آدمی آپ کے مقابلہ میں خواہ مخواہ نہیں آئینگے لیکن آپ ان کو مجبور کرتے ہیں کہ وہ آپ کا مقابلہ کریں - مگر آپ یاد رکھیں کہ مسلمان قوم Depressed Class کی طرح مردہ نہیں ہے وہ ایک زندہ قوم ہے اگر اس کے ساتھ زبردستی کی گئی تو وہ اس کا بدلہ لیگی - اگر کوئی مسلمان مجرم ہے تو اسے بے شک سزا دیں - پھر یہ بھی کہنا چاہتا ہوں کہ Section 46 D میں جس کی deletion کے متعلق مسٹر شمس الدین نے amendment پیش کی ہے کہ اگر ایک شخص کو یا ایک gang کو extern کردیا جائے اور میعاد کے اندر واپس چلا آئے تو اسے گرفتار کیا جاتا ہے اور زیادہ سے زیادہ دو سال اور کم از کم چھ ماہ کی اسکو سزا ہوگی - یہ maximum and minimum punishment کا معاملہ پہلے طے ہوچکا ہے اور اس پر تقریریں ہوچکی ہیں - میں صرف ایک بات کہونگا کہ ہندوستان میں زمین کے ہر حصہ پر ہر ہندوستانی کو جانے کا حق ہے - کیونکہ ہندوستان ہندوستانیون کا ہے تو پھر اس کے زمین کے ہر حصے

[Mr. Mohamed Umar Rajab]

ہر ہمیں جانے کا اختیار کیوں نہ ہو؟ اگر کوئی جرم کرے تو اس کو سزا دیں۔ لیکن کسی صوبہ کو ایسا قرار نہیں دینا چاہئے جہاں مجرم کو رہنے کی اجازت نہ ہو

Mr. BABUBHAI J. PATEL:

آپ تو پاکستانی ہیں (Āp to Pakistani hain)

Mr. MOHAMED UMAR RAJAB:

اگر آپ ہمیں پاکستانی مان لیں تو پھر جھگڑا ہی ختم ہوتا ہے ہمیں بنایا تو جاتا ہے ہندوستانی اور پھر کہا جاتا ہے کہ ہمارے حصہ ملک سے نکل جاؤ۔ میں یہ کہتا ہوں کہ ہم اس زمین پر جہاں جانے سے ہمیں منع کیا گیا ہے اور جو کہ ہماری پیدائش کی زمین ہے نہ جانے کے لئے خواہ کسی کا آرڈر ہو کیوں مانیں؟ اگر ایسے حکم کا نہ ماننا ہمارے لئے جرم ہے تو میں پوچھتا ہوں کہ کشمیر کے مہاراجہ صاحب کا آرڈر پنڈت جواہرلال نہرو نے کیا کہہ کر توڑا تھا؟ کیا یہ نہیں تھا کہ ہم ہندوستان کے پیدائشدہ ہیں اس لئے ہمیں حق ہے ہندوستان کے ہر کونے میں جانے کے لئے۔ وہ کیا پرنسپل تھا پھر آپ کیوں پابندیاں لگاتے ہیں کسی کے اوپر صوبے میں داخل ہونے کے لئے؟ اپنے نیتا کے اصول پر چلئے

Mr. DINKARRAO N. DESAI:

آپ کے لئے پابندیاں نہیں ہیں (Āp ke liye pābandiān nahin hain)

Mr. MOHAMED UMAR RAJAB:

تاریخ کو بمبئی میں پولیس نے مسلمانوں کے 5th September 1946 ایک پرامن مقام پر shooting کی دھمکی دی۔ جب میں نے دریافت کیا کہ کیا خواہ مخواہ گولی چلاؤ گے تو جواب ملا کہ ہاں I will shoot for nothing میں نے کہا کہ اگر خواہ مخواہ گولی چلانا چاہتے ہو تو پہلے مجھ پر

[Mr. Mohamed Umar Rajab]

جلاؤ اس کے بعد وہ پولیس افسر فوجیون کو بلا لایا۔اور کہنے لگا کہ خواہ مخواہ دخل درمعقولات دیتے these men of self-presumed importance ہین ہمارے پولیس افسر ڈپٹی کمشنر آف پولیس مسٹر ہوسالي تھا۔یہ ڈپٹي کمشنر آف پولیس کا حال ہے۔یہ طریقہ ہے آپ کي پولیس کا۔یہ برتاؤ ہے آپ کي پولیس کا شریف آدمیون کے ساتھ۔اور اُسي پولیس کے ہاتھ مین یہ اختیارات آپ دے رہے ہین۔لہذا مین اپنے تجربے کي بنا پر اس قانون کي حمایت کیسے کرون؟ اس لئے مین ان ترمیمات کي حمایت کرتا ہون

(*Substance of the above in English*).

I support the amendments moved by the Muslim League Party and Mr. Chakranarayan to clause No. 4 of the Bill. By passing such a harsh Bill the Government is doing injustice in broad daylight. For instance, benefit of doubt is given to the accused under the Criminal Procedure Code, but under this Bill it will go to the complainant, and having so many disabilities under this Bill the accused will not able to defend his case. If any dangerous man is removed from his present place of residence to another District or Province he is liable to create trouble there also, because the change of place cannot necessarily obstruct him from playing mischief. On the contrary, the other Province will also be affected due to his presence and thus the trouble will spread to other Provinces instead of being confined to his original Province. It is not, therefore, fair on the part of the Government to throw the human refuse of its Province into its other sister Provinces. If the accused will not get shelter in any Province he will start an under-ground movement which will be more bothersome for the Government. It is inadvisable and unsafe to confer wide powers on the police who are already notorious for misusing the powers which they already possess.

Mr. A. A. KITTUR : Mr. Speaker, Sir, I rise to support a few of the amendments moved by different hon. Members. I may assure you that I am neither going to repeat the arguments aleady advanced by other hon. Members nor waste the valuable and precious time of this House. But what I feel is that while we are making an attempt to express our views on many amendments moved from this side of the House, we are charged with adopting dilatory tactics of lengthening the debate. Even the Congress Press has published these things, which I very much regret. We are not to gain anything by adopting these means. We are not in any way gainers by wasting our time as well as the valuable time of the hon. House, but as it was referred to the other day by the Hon. the Leader of the Opposition, it has been only our fortune or misfortune to support or to advocate the cause of liberty of a peaceful citizen. When such a Bill which is so very important is moved in this House I do not know whether it is so to my hon. Friends on the other side ; at least we have been saying that it is such an important Bill which goes to cut at the very root of the liberty of a citizen which is his birthright—I think, Sir, we cannot help but express our views about the undesirability of its introduction. With these remarks, I come to the various amendments which I propose to support.

[Mr. A. A. Kittur]

I first come to amendment No. 18 to clause 4. This clause empowers the Magistrate of the District to order a suspect to conduct himself as the Magistrate shall deem necessary in order to prevent a disturbance of the peace. What is sought to be deleted here is the next clause, viz., " to remove himself outside the Province or to such place within the Province by such route and within such time as such Magistrate shall prescribe ".

The first remedy which the Magistrate is empowered with, viz., to order the suspect to conduct himself as the Magistrate shall deem necessary, is itself sufficient. I think the Magistrate in his order can specify what are the limitations and what are the ways in which that person should conduct himself. Having done that, I do not think there is any necessity of the second clause wherein he orders the person to remove himself outside the Province or to such place within the Province by such route and within such time as such Magistrate shall prescribe. I, therefore, submit that this clause is superfluous and so the amendment, I hope, will be accepted by Government.

Then I come to section 46C. Here again when we are talking of democracy, when we are thinking of separating the executive from the judiciary, the privileges which, both under the Evidence Act and the Criminal Procedure Code, have been given to the Police are being also conferred upon the Magistrates. They are being given the privilege of not disclosing the name of the informant. So far as the police are concerned, I can understand it because if they were to disclose the name of the informant it may embarrass them in their investigations. In the case of the Magistrate who is a judicial authority when the evidence is before him and if he is convinced of the guilt of a particular suspect I do not understand why he, —in this case the District Magistrate or the Sub-Divisional Magistrate— should seek the privilege of not disclosing the name of the informant to the suspect or accused, as he is not the person to be cowed down by anybody on account of the disclosure. If this is done, it would be a very great power in his hands and, as the hon. Member who spoke immediately before me said in narrating his own experiences, would enable him to commit many undesirable things. Especially this Government, which claims to be a democratic Government, should not even think of such a measure. I do not know, Sir, what is behind the curtain to induce or compel them to introduce such a drastic measure. Hence I believe that Government will reconsider the position in view of the circumstances brought to their notice by the various hon. Members, and especially by my hon. Friend Mr. Umar Rajab.

Then I come to the amendment moved by my hon. Friend Mr. Quwari, who has suggested a reasonable alternative to section 46C. His amendment reads :

" The Magistrate or any officer shall *if required by the person against whom an order is made* under sub-section (3) or (4) of section 46..... "

By this amendment what is sought to be achieved is that if the person against whom an order is made desires disclosure of the information or the facts which led the Magistrate to pass such order, then he should have access to that information. I do not think any alternative more moderate than this could be conceived of. This amendment which is reasonable and goes to meet the demand of this side of the House should, I submit, be accepted by the Hon. Minister in charge of the Bill.

[Mr. A. A. Kittur]

Then I come to the amendment suggested in line 138. This is a penal provision. Here I would not have pressed for the acceptance of the amendment had it not been for the fact that even petty offences like those under section 323 of the Indian Penal Code are included. If a man who is convicted of such an offence and has even been dealt with under section 562 of the Criminal Procedure Code comes again or there is information against him as mentioned in this clause he shall, under the provision sought to be introduced, be given the minimum punishment of imprisonment for six months and also fine. This is not only very harsh, but I think also not in consonance with the canons of justice. Therefore, instead of the minimum punishment of imprisonment sought to be inflicted on the accused in the original Bill he should be let off with a fine. If this is done the ends of justice will be met.

Then I shall deal with the amendment proposed in line 139 of section 46D. I shall read the relevant portion of the original section. It reads: "..... shall be punished with imprisonment for a term which may extend to two years but shall not, except for reasons to be recorded in writing, be less than six months, *and shall also* be liable to fine". The amendment proposed seeks to substitute the word "or" for "and" and to delete the words "shall also". As I have said before the object of the amendment is to reduce the punishment. Either the man should be punished with imprisonment for six months or he should be fined but not both. I think this is a reasonable amendment.

Before I resume my seat I would like to say that our honest attempts to discuss the merits of the Bill and our protest against its introduction should not be misunderstood as dilatory tactics on our part. As has already been said, we have nothing to gain by prolongation of the debate.

With these words, I support the amendments.

Mr. ABDUL SATAR A. GANDHI: Mr. Speaker, Sir, I beg to support the amendments that have been moved by the various hon. Members on clause 4. The hon. Member Mr. Bhaiji said, and very rightly, that the Treasury Benches want to justify the Bill under consideration on the ground that there is already a provision on that pattern, namely, in the Bombay City Police Act. On this point I would like to draw the attention of the Hon. Minister in charge of this Bill to a few head lines that appeared in one Gujarati newspaper in Bombay where the Bomay City Police Act is already in force.

The headline reads:

ખરા ગુંડાઓ છુટા ફરે છે.

ગુંડાઓને બદલે ભળતા માણસોની પકડાપકડી સામે પ્રજાજનોનો વિરોધ.

Mr. J. H. SHAMSUDDIN: The hon. Member will please translate it into English.

Mr. ABDUL SATAR A. GANDHI: It means "Real *goondas* are, in fact, at large, while the law-abiding citizens are being rounded up by the Police as *goondas*. If that is the sort of luck that we are going to face in times to come, throughout the Province of Bombay, it would be simply tragic for the tax-payers and the citizens. It is my honest and sincere conviction that what is required is not a stern measure like the present one, which is rightly described as a black Act; but the real need

[Mr. Abdul Satar A. Gandhi]

and necessity of the province is an efficient police force. Do the hon. Members on the Treasury Benches assert that the police do not know the *goonda* gangs, prostitution brothels, gambling dens and various other really anti-social activities that are existing in the Province of Bombay ? It is a matter of common knowledge that the police as such know all these gangs that have been indulging in anti-social activities. It is therefore that I am compelled to say that what we actually want is an efficient police, and not the black measure that the Govenment is seeking to enact, and that too unfortunately in the year of grace 1946.

My other regret is that this Bill should have been piloted by a lawyer of repute like the Hon. Minister in charge of Law, Mr. Dinkarrao Desai, who has several times, both in and out of court and within my hearing, advocated the cause of civil liberties and restricting the powers of the police. After all, what is it that they are seeking to achieve by this Bill ? If it is the rounding up of the *goondas*, then here in this Gujarati paper is the proof that good citizens are being rounded up as *goondas* [*Laughter*]. As pointed out by my hon. Friend Mr. Rajab, a *goonda* is after all a *goonda*.

The Hon. the SPEAKER : The hon. Member need not repeat the arguments on the subject which have been already advanced by other hon. Members.

Mr. ABDUL SATAR A. GANDHI : I thank you, Sir. I do not want to repeat the arguments, but I think it is my solemn and sacred duty to appreciate certain reasonable and logical arguments that were put forward by certain hon. Members of this House. If the Treasury Benches fail to appreciate them, it is my sacred duty at any rate to do so.

An Hon. MEMBER : Sacred !

Mr. ABDUL SATAR A. GANDHI : Clause 4 is a very hard and harsh provision. It deprives the suspect of a reasonable opportunity of leading his defence. In section 46C it has been provided that the prosecution shall not disclose the name of the person who provided the information or of the property not only to the accused, not only to the suspect, but also to any court. Why do you want to take away the opportunity from the suspect ?

The Hon. the SPEAKER : The hon. Member should see that the same views that he now wants to propound have already been propounded by several other Members of his own party. He need not repeat them.

Mr. ABDUL SATAR A. GANDHI : Possibly I may have been absent at that time, and if I have repeated the same arguments, I am really sorry for it. I do not want to waste the time of the House and my valuable time as well.

I find that there is not much scope for putting forward any new aspects. Possibly they may have been debated and discussed in my absence. Therefore, I shall not take any further time and shall simply appeal to the Hon. Minister, who is piloting this Bill today, to take into consideration some of the very reasonable amendments that have been moved by some hon. Members on this particular clause.

Mr. RAZIUDDIN H. GOODWALA (Dharwar District) : Sir, I will be as brief as possible. I want to point out that there is one particular word, the intention of which, in spite of our efforts to get an explanation, is not clear to us. On page 5, in

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line 113, in Section 46C the word " property " has been used. I do not wish to read to the House the whole Section 46C, which deals with non-disclosure of the source of information, and the purport of which is that the Magistrate shall not give the source of his information or any fact the communication of which might in the opinion of the Magistrate lead to the disclosure of the identity of any person or property. One can very well understand that the word person may be desirable or necessary in sub-clause (3) of clause 3 of the Bill. Under that sub-clause, it is probable that the man disclosing the information may apprehend some injury to his person or property, or may not have the moral courage to disclose his identity for fear of some bodily injury to himself or some harm and damage to his property. But one cannot understand the propriety of the word " property " in Section 46C. I do not know what harm could be done by the identity of the property in this case. We can understand with regard to the person, and his identity may not be disclosed. There may be certain persons, who may be really knowing the truth, but on account of their cowardice may not be willing to their identity being disclosed. But what about property ? What is there to hide its identity ? Suppose a certain person has been accused of having committed incendiarism, or looting some property, and it is necessary to know where that property is and what sort of property it is, then that must be made known. There should be no fear or harm with regard to that property. With regard to non-disclosure of person at least there can be some explanation, but we cannot understand why property should not be disclosed. As a matter of fact, the property may be existing intact without the least damage.

Sir, we find that even under the ordinary law, the property which is alleged to have been stolen has to be shown to the accused person to enable him, if possible, to rebut the prosecution evidence of immediate possession, or disposal of it as the case may be. But here, under this Bill, the burden of proof is thrown on the accused. He is presumed to be a suspect, but then the person to whom he is likely to cause harm or has caused harm, or the property in respect of which he is being accused, is not to be disclosed to him. I think this is a complete violation of all elementary principles of jurisprudence. Therefore, I would like to know why that word " property " has been incorporated in that section. What is the real intention of the Minister in keeping that word there ? This is so far as the legal flaw that exists in this section.

Then I come to the case of the emergency which is to be declared under section 46B. Now under this section 46B, a suspect—not that he is a person who has been proved guilty—is to be detained for a fortnight at a time. In many cases the emergency may last only for a day or two, and the poor man will be unnecessarily detained for a whole fortnight, or at times even two months, and if he has been deported then he would have no chance to return to his place. If it was meant that for the period of the emergency only he should not return within the specified area, that would have been something. But this punishment that he is not to come back at all is out of all proportion to the magnitude of the offence—

The Hon. the SPEAKER : If the hon. Member will see the provision, it is only for the period of the emergency that he is to be out.

Mr. RAZIUDDIN H. GOODWALA : That provision is, I believe, with regard to detention only.

Mr. DINKERRAO N. DESAI: The wording is "any order made". Therefore, it covers all orders.

Mr. RAZIUDDIN H. GOODWALA: Yes, it is so. Thank you.

Then, the punishment provided is very harsh. The nature of the offence is not so severe as to warrant this harsh punishment. After all, the man might have been hauled up simply because of some suspicion, or because of some mischief played by another who had some grudge against him. The man might be innocent, and he might have come into the clutches of law owing to some unfortunate suspicion. But he has got every right to come back to the Province where he was born. In this connection, I may draw the attention of the House to the Question hour this morning, when questions relating to the Jejuri Temple Dacoity case were put. Government stated that the prisoners who were convicted in these cases were released. When, due to a certain motive—that motive may appeal to Government, but it may not appeal to others—such convictions are condoned, why should people belonging to a certain creed and who might want to assert their right of coming within the Province of their birth be punished beyond all proportion? I submit that this is an extremely severe punishment. For these reasons, I have pleasure in supporting the amendments moved by my hon. Friends, and I commend them to the House for acceptance.

Mr. WAJIHUDDIN A. PARKAR (Ratnagiri District): I rise to support the amendments moved for the deletion of Section 46A. This section relates to the deportation of *mowalis* and *goondas*, when there is an emergency, from district to district and from Province to Province. I have got a very serious objection to this, because it creates migration of parties of gangsters, *mowalis*, and *goondas*; and such a step by any Government will be unwise. We cannot create nuisance for us and nuisance for other Provinces. We know that in the olden days there were migrating parties called the Pindaris. If Government are keen in extirpating the nuisance of these *goondas*, then the only step—and probably a novel one for the Government of Bombay—would be to establish centres of segregation where they, whether Hindus or Muslims, could be kept and thereby safeguard the rights of peace-loving citizens. Government cannot stop the nuisance of the *goondas* unless they take some such step. I do not wish to take much time of the House, but, with your permission, I would draw the attention of hon. Members to an open letter to the press which was written by the residents of Shivaji Park in Bombay.

The Hon. the SPEAKER: No extracts from newspapers can be read in the course of the debate.

Mr. WAJIHUDDIN A. PARKAR: This letter refers to *goondas* and it states who the real *goondas* are and since when they do exist in Bombay. It is stated in this letter that this nuisance has been going on there for the last six years. And it is surprising that Government say that this nuisance has started only recently. This sort of nuisance is being helped and supported by the police of Bombay. That is one of the allegations contained in the open letter. The police have a hand in the activities of these *goondas*, and are paid by them. Such is the state of affairs of our police, and this section in the Bill is not going to remove that nuisance unless Government come forward to think over this problem very seriously. So, I support the amendment moved by the hon. Member Mr. Shamsuddin.

[Mr. Wajihuddin A. Parkar]

As regards the other two amendments, particularly the amendment for the deletion of clause 46C and clause 46D, I have nothing to add. I will, however, only say that under the Law of Evidence and the Code of Criminal Procedure no man can be punished unless evidence is recorded in his presence and unless he knows what others have to say against him and what is the charge against him and what is the information that is given against him. This particular clause also refuses to give information to courts of law too. I, therefore, support the amendment for the deletion of this clause.

Sir, I support the amendments moved by my hon. friends on this side of the House.

Mr. J. H. SHAMSUDDIN: Sir, I have nothing to add to my remarks since Government has not tried to meet my arguments.

Mr. AHMED A. PATEL: As I said yesterday, Government have decided not to provoke discussion in this House and I have no more remarks to offer.

Mr. DINKERRAO N. DESAI: Mr. Speaker, Sir, I rise to oppose all the amendments moved in this House, except the one moved by the hon. Member Mr. Kunte, with the clearest conscience and the firmest conviction that the measure which is proposed by the Government is necessary in the public interest and absolutely essential for the peace and prosperity of this Province. The attempts of the Opposition to water down this important measure, if allowed to prevail, will only lead to development of circumstances which may make civil life in the Province absolutely unsafe and dangerous. Therefore it is that this measure is being proposed.

If we scrutinise the provisions of these three or four sections which are now before the House, it will be apparent that the ordinary citizen is not likely to be affected. As a matter of fact, the most important section on which the discussion has centred, namely, Section 46B, is not going to be put into operation in normal times. It is only in times of emergency that this section is to be extended to that particular part of the Province. It cannot, by a general order, be applied throughout the Province, but only to a particular portion thereof where a certain state of circumstances exists. What are those circumstances as contemplated by this clause? Before a state of emergency is declared, the Government has got to be convinced that there is a likelihood of conflict between different communities or sections thereof. In case of a conflagration, in a case where communities come to blows, ordinary powers generally fail. We have seen it in Ahmedabad; we have seen it in Bombay. We see that stabbing goes on from day to day and rioting continues. In these circumstances, are the normal powers given under the Code of Criminal Procedure or under the Indian Penal Code adequate to deal with the situation? These are times when strong measures are required. If the Government of the day does not take the necessary action, it will be guilty of endangering life and property; it will be relinquishing its elementary duty of protecting the citizens whose life and property it has taken charge of. It is only in those circumstances that an emergency is to be declared. That declaration of emergency under the provisions of this clause does not last for a day more than required. Immediately the emergency ceases, all the powers which are vested in the executive officers cease; all those orders which have been issued also cease and normal liberties are restored, restored not only to the citizens but even to the *goonda* against whom this measure is mainly directed.

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Further, these measures are to be taken by a popular Government. That Government has to stand before the bar of public opinion. If it is hasty in its measures, we know what the consequences will be. The public will not tolerate it for long. It has got to answer for its actions. Therefore, there cannot be any danger that these powers of declaring an emergency will be utilised by Government lightly or frivolously. Again, this Government is responsible to this House. There are so many powers vested in the hon. Members of this House that there cannot be any chance of any Government taking the risk of being hasty in the matter. These are all the safeguards under which this particular clause is going to come into operation.

6-43 p.m.

Now what are the powers which are given by the clause? When a state of emergency is declared, what can be done is to detain certain dangerous persons. In the first instance, that detention is only for fifteen days. If there is any extension required, the papers have to be submitted to the Provincial Government. It is only when the Provincial Government authorises that further extensions can be given. Again, Sir, these provisions cannot last a day longer than the emergency.

The second provision is to ask the man to go out of the district or out of the Province. You know, Sir, in times of emergency, if these dangerous characters are allowed to remain in the danger zone, the result would be a further risk to life and property. Those people who are working against public peace will get strengthened, their nefarious activities will develop and public life and safety would be impossible. Under these circumstances, if during the period of emergency they are called upon to walk away from the zone of danger or from the Province, what is the loss to civil liberty? We have seen that, unless these acts of the *goondas* are restricted, unless these *goondas* are brought under control, civic life becomes impossible. We have seen that, on account of inadequacy of powers, for days together a twenty-four hours' curfew had to be enforced on the public. It is, therefore, necessary that, persons who are likely to be dangerous to the safety of the citizens and to life and property should be externed from a particular part, for the period of emergency. As soon as the emergency disappears, they can come back.

The third power taken is to call upon this particular element to behave in a particular way. It might be that he may be restricted to stay in his own house. He may be called upon not to go to any particular part of the city or the affected area. These are very ordinary measures and they do not endanger civil liberty. On the contrary, they go to help civil liberties and go to help in the restriction of circumstances which develop into a public danger.

Now, much has been made of very, very small facts—that these powers will be exercised indiscriminately and that they will be exercised in such a way as to prejudice the activities of a certain section of the people. My submission is that these provisions have been in existence in the City of Bombay Police Act. They have been in operation for the last so many years and they have not been used with unwisdom or without circumspection. They have been on the statute book and have safeguarded so far public liberties in times of danger. There has not been a single charge brought before this House that at any time Government has made use of these powers in such a way as to deprive any legitimate parties of their public activities, and I submit if there were any such instances they would have been brought up in the course of the debates as a part of the arguments on the other side. It has not been done. This proves the case to the hilt that so far no Government has

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used these powers in such a way as to be dangerous to the political activities of any party. I submit that these powers are to be exercised by a popular Government and they will be exercised in the public interest. I do not see any harm in investing a Government, which depends for its existence on public opinion, with these powers. It is not likely to endanger any legitimate activity.

Then, Sir, so far as section 46C is concerned, it merely says that the name of the person who has given some information may not be given out by the Magistrate. It is very difficult to secure evidence against persons who are of a dangerous character. We find every day that these persons, who have no regard for public life and safety, who have no regard for person or property, are very difficult to handle. If the names of persons who give information about them are given out, what the consequences will be can easily be imagined. I have known of cases where informants against dangerous persons have been subjected to the worst possible repression by such people. At times they have lost their lives. Now, Sir, if when there is a conflagration and when public sentiment is excited, these names are revealed, what will be the consequence? The only consequence will be that the life or property of the informant would not be safe; as a matter of fact, nobody would come out to give evidence in such circumstances. I submit, therefore, that, in reserving these powers to a Magistrate, no violence is done to the ordinary rules of jurisprudence.

Again, so far as the punishing sections are concerned, I submit that the Government has been very moderate in making these provisions. The main attempt was against provision of minimum punishment. I submit that this is rather a notice to the person against whom an order is being passed as to what the consequences of his actions are likely to be. It is always open to a Magistrate to give the maximum punishment to a man. Instead of doing that, an intimation is given to him, and it will be made clear that a breach of the order under these circumstances will be very severely noticed by the law. He is being informed that, if he breaks the law and if he does not obey the orders issued against him, the consequence will be punishment for at least six months. This is a punishment provided against a person who knows that there is an order against him and who knowing it breaks that law, and naturally the presumption would be that he breaks the law not with any pious motive but with the motive perhaps of adding to the conflagration affecting public life and property. I, therefore, submit that the provision of six months minimum punishment is a very moderate measure having regard to the times in which we are at present placed.

6-50 to 6-55 p.m.

I submit, therefore, Sir, that so far as the provisions of this measure are concerned, they are quite moderate and meant only to deal with certain contingencies when ordinary law does not appear to be effective to the executive and when special measures are required for the suppression of special conflagrations. Under these circumstances, I see no other alternative but to oppose all the amendments moved by the Opposition.

So far as the hon. Member Mr. Kunte's amendment is concerned, it only clarifies that particular clause and does not add anything to the clause, nor does it bring in any major change in the provisions of this particular section.

I, therefore, oppose the amendments.

The Hon. the SPEAKER: I now put the amendments to the House.

[The Speaker]

I will first put amendments Nos. 16, 20 and 22 which seek to delete clauses 46B, 46C and 46D.

First, let us take up amendment No. 16 which seeks to delete clause 46B.

Amendment put, and negatived.

I shall now put the second amendment, viz., amendment No. 20 which seeks to delete clause 46C.

Amendment put. The House divided :

Division No. 18. [The Division was taken by asking the Members to rise in their places.] Ayes 21 ; Noes 33.

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